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VIA OVERNIGHT MAIL

January 13, 2006

RECEIVED

JAN 17 2006

Beth A. O'Donnell, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

**PUBLIC SERVICE
COMMISSION**

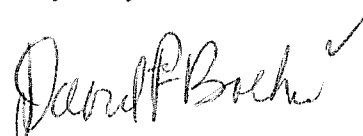
Re: Case No. 2005-00351 and Case No. 2005-00352

Dear Ms. O'Donnell:

Please find enclosed the original and twelve (12) copies of SUPPLEMENTAL Responses of Kentucky Industrial Utility Customers, Inc. to LG&E and KU's First Set of Data Requests to be filed in the above-referenced matter.

By copy of this letter, all parties listed on the attached Certificate of Service been served. Please place this document of file.

Very Truly Yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment

cc: Certificate of Service
A. W. Turner, Esq.

CERTIFICATE OF SERVICE

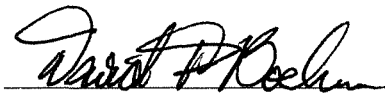
I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by overnight mail (unless otherwise noted) to all parties on the 13th day of January, 2006.

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A handwritten signature in black ink, appearing to read "David F. Boehm", written over a horizontal line.

David F. Boehm, Esq.
Michael L. Kurtz, Esq.

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

THE PLAN OF KENTUCKY UTILITIES)	
COMPANY FOR THE VALUE DELIVERY	)	CASE NO.
SURCREDIT MECHANISM	)	2005-00351

RECEIVED

IN THE MATTER OF:

THE PLAN OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR THE VALUE	)	CASE NO.
DELIVERY SURCREDIT MECHANISM	)	2005-00352

JAN 17 2006

**PUBLIC SERVICE
COMMISSION**

**SUPPLEMENTAL RESPONSES OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO
FIRST SET OF DATA REQUESTS OF LG&E AND KU**

1. Please provide a complete copy of the following documents referenced in Exhibit _(LK-1) to Mr. Kollen's testimony:
- (a) November 1998 testimony in Case No. U-23327 before the Louisiana Public Service Commission;
 - (b) September 2004 testimony in Docket No. U-23327 Subdocket B before the Louisiana Public Service Commission;
 - (c) February 2005 testimony in Case No. 18638-U before the Georgia Public Service Commission;
 - (d) June 2005 testimony in Case No. 050045-EI before the Florida Public Service Commission; and
 - (e) September 2005 testimony in Case No. 20298-U before the Georgia Public Service Commission.

RESPONSE: 1(a)-(e). Due to the volume of the response, a single copy of each of the requested testimonies has been provided only to the Companies. Copies will be provided to other parties only upon request to KIUC counsel.

2. **Please identify any expert testimony appearances not shown on Exhibit _ (L K -1) which refer or relate to any type of surcharge or surcredit rate mechanisms.**

RESPONSE: Mr. Kollen filed testimony in Docket No. 31056 before the Texas Public Utility Commission in August 2005 addressing a stranded cost surcharge. This testimony inadvertently was not reflected on Mr. Kollen's Exhibit____(LK-1). A copy has been provided only to the Companies in conjunction with this Supplemental Response due to its voluminous nature. A copy will be provided to any other parties upon request.

3. **For any appearances identified in response to the preceding question, please provide a complete and accurate copy of any written testimony associated with such appearance.**

RESPONSE: Mr. Kollen filed testimony in Docket No. 31056 before the Texas Public Utility Commission in August 2005 addressing a stranded cost surcharge. This testimony inadvertently was not reflected on Mr. Kollen's Exhibit___(LK-1). A copy has been provided only to the Companies in conjunction with this Supplemental Response due to its voluminous nature. A copy will be provided to any other parties upon request.

SOAH DOCKET NO. 473-05-7455

PUC DOCKET NO. 31056

2005 SEP -2 PM 2:56

APPLICATION OF AEP TEXAS) PUBLIC UTILITY COMMISSION
CENTRAL COMPANY AND CPL)
RETAIL ENERGY, LP TO DETERMINE) OF
TRUE-UP BALANCES PURSUANT TO)
PURA §39.262 AND PETITION TO) TEXAS
DETERMINE AMOUNT OF EXCESS)
MITIGATION CREDITS TO BE)
REFUNDED AND RECOVERED)

DIRECT TESTIMONY
AND EXHIBITS
OF
LANE KOLLEN

ON BEHALF OF
THE ALLIANCE OF VALLEY HEALTHCARE

J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA

AUGUST 2005

SOAH DOCKET NO. 473-05-7455

PUC DOCKET NO. 31056

APPLICATION OF AEP TEXAS	)	PUBLIC UTILITY COMMISSION
CENTRAL COMPANY AND CPL)	
RETAIL ENERGY, LP TO DETERMINE	)	OF
TRUE-UP BALANCES PURSUANT TO)	
PURA §39.262 AND PETITION TO	)	TEXAS
DETERMINE AMOUNT OF EXCESS)	
MITIGATION CREDITS TO BE)	
REFUNDED AND RECOVERED)	

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SOAH DOCKET NO. 473-05-7455

PUC DOCKET NO. 31056

APPLICATION OF AEP TEXAS)	PUBLIC UTILITY COMMISSION
CENTRAL COMPANY AND CPL)	
RETAIL ENERGY, LP TO DETERMINE	)	OF
TRUE-UP BALANCES PURSUANT TO)	
PURA §39.262 AND PETITION TO	)	TEXAS
DETERMINE AMOUNT OF EXCESS)	
MITIGATION CREDITS TO BE)	
REFUNDED AND RECOVERED)	

DIRECT TESTIMONY OF LANE KOLLEN

I. QUALIFICATIONS AND SUMMARY

1 Q. Please state your name and business address.

2

3 A. My name is Lane Kollen. My business address is J. Kennedy and Associates, Inc.
4 ("Kennedy and Associates"), 570 Colonial Park Drive, Suite 305, Roswell, Georgia
5 30075.

6

7 Q. What is your occupation and by whom are you employed?

8

J. Kennedy and Associates, Inc.

1 A. I am a utility rate and planning consultant holding the position of Vice President and
2 Principal with the firm of Kennedy and Associates.

3

4 Q. Please describe your education and professional experience.

5

6 A. I earned a Bachelor of Business Administration (Accounting) degree from the University
7 of Toledo. I also earned a Master of Business Administration degree from the
8 University of Toledo. I am a Certified Public Accountant, with a practice license. I also
9 am a Certified Management Accountant.

10

11 I have been an active participant in the utility industry for more than twenty-five years,
12 both as an employee and as a consultant. Since 1986, I have been a consultant with
13 Kennedy and Associates, providing services to state government agencies and large
14 consumers of utility services in the ratemaking, financial, tax, accounting, and
15 management areas. From 1983 to 1986, I was a consultant with Energy Management
16 Associates, providing services to investor and consumer owned utility companies. From
17 1976 to 1983, I was employed by The Toledo Edison Company in a series of positions
18 encompassing accounting, tax, financial, and planning functions.

19

20 I have appeared as an expert witness on accounting, finance, ratemaking, and planning
21 issues before regulatory commissions and courts at the federal and state levels on more
22 than one hundred occasions. I have developed and presented papers at various industry
23 conferences on ratemaking, accounting, and tax issues. I have testified in nearly thirty

1 restructuring, stranded cost, unbundling, and final stranded cost true-up proceedings in
2 Texas, Pennsylvania, Ohio, Georgia, Connecticut, Maine, West Virginia, Maryland, and
3 Louisiana. In those proceedings, I addressed the stranded cost, accounting, and tax
4 implications of restructuring and divestiture, including regulatory assets and liabilities,
5 Statement of Financial Accounting Standards ("SFAS") No. 109 regulatory assets and
6 liabilities and related accumulated deferred income taxes ("ADIT"), investment tax
7 credit ("ITC"), other ADIT, and excess deferred income tax ("EDIT") issues.

8
9 I have testified on numerous occasions in Texas, most recently in the CenterPoint
10 Energy Houston Electric, LLC Docket No. 29526 stranded cost true-up and Docket No.
11 30485 securitization proceedings. I also have testified in other stranded cost and
12 securitization proceedings before the Commission in Docket Nos. 21527, 22350, and
13 25230 involving TXU and Texas-New Mexico Power. My qualifications and regulatory
14 appearances are further detailed in my Exhibit LK-1.

15
16 **Q. On whose behalf are you testifying?**

17
18 **A.** I am offering testimony on behalf of the Alliance for Valley Healthcare.

19
20 **Q. What is the purpose of your testimony?**

21
22 **A.** The purpose of my testimony is to address and correct certain of the stranded cost true-
23 up quantifications filed by AEP Texas Central Company ("TCC" or "Company") and

CPL Retail Energy, LP. In addition, I address the Company's claim of a potential normalization violation if ITC and EDIT amounts are used to reduce the stranded cost true-up quantification and the prudence of the Company's actions in the filing of a request for Private Letter Ruling ("PLR") with the IRS in which it argued against ratepayer interests consistently recognized by the Commission.

Q. Please summarize the Company's stranded cost true-up claim.

A. The Company's stranded cost true-up claim is \$2,399.831 million and is summarized in the table below:

**SUMMARY OF AEP TEXAS CENTRAL COMPANY'S
STRANDED COST TRUE-UP CLAIM
(\$000)**

Book Value	\$1,908,836
Less Sales Proceeds (Net of Costs)	<u>(\$769,272)</u>
Subtotal Stranded Costs Before Interest	\$1,139,564
Interest on Stranded Costs	\$591,543
Regulatory Assets	<u>\$252,640</u>
Total Stranded Costs Incl Interest	\$1,983,747
Capacity Auction True-Up	\$654,167
Fuel Over-Recovery	(\$176,698)
Retail Clawback	<u>(\$61,385)</u>
Total True-Up Claim	<u>\$2,399,831</u>

1 Q. Please summarize your testimony.

2

3 A. I recommend that the Commission reduce the Company's stranded cost claim by at least
4 \$918.824 million, consisting of numerous adjustments to reduce the amounts claimed by
5 the Company. The adjustments that I recommend are in addition to adjustments
6 proposed by other witnesses with which AVH may agree, but that I have not addressed
7 in my testimony. The adjustments and figures I discuss are based on the Company's
8 filing. I have summarized the adjustments to the Company's claim that I recommend on
9 the following table. Following this table, I then provide a brief summary of each of
10 these adjustments.

11

**Summary of Proposed Reductions to
Texas Central Company Stranded Cost True-Up Claim
Addressed in Kollen Direct Testimony
(\$000)**

1. Include SFAS109 ITC Regulatory Liability	54,969
2. Include SFAS109 EDIT Regulatory Liability	3,381
3. Include NPV of SFAS 109 ADIT	111,795
4. Include NPV of ITC on Tax Basis at 12/31/01	65,231
5. Include NPV of EDIT on Tax Basis at 12/31/01	6,279
6. Increase Sales Prices for M&S and Fuel Inventories	16,223
7. Remove Plant Employee Severance Costs	5,499
8. Include Return Of and On Stranded Costs Recovered through Capacity A	31,760
9. Reflect EMC's Paid to AREP	30,650
10. Reflect Corrections to Stranded Cost Interest, incl Retrospective ADIT	254,928
11. Reflect Corrections to Capacity Auction Stranded Cost Interest	64,063
12. Include Prospective ADIT	<u>274,046</u>
Total AVH Recommendations	<u>918,824</u>

12

13

14 The first and second adjustments that I recommend are reductions of \$54.969 million
15 and \$3.381 million, respectively, for the SFAS 109 regulatory liabilities related to ITC

1 and EDIT. The Company failed to net these regulatory liabilities against its claim for
2 regulatory assets, although the statute is clear on the requirement to do so.

3
4 The third adjustment that I recommend is a reduction of \$111.795 million to correctly
5 quantify the Company's claimed SFAS 109 regulatory asset by reducing it for the related
6 ADIT offset. The Company failed to quantify any offset for the ADIT that gave rise to
7 the SFAS 109 regulatory asset. The Commission previously determined in Docket No.
8 21528 that the effects of the ADIT that gave rise to the SFAS 109 regulatory asset were
9 to be reflected as a reduction to the true-up amount.

10
11 The fourth adjustment that I recommend is a reduction of \$65.231 million to reflect the
12 net present value of the ITC amortization over the life of the stranded cost true-up
13 recovery period. The Commission has consistently determined that the ITC tax benefit
14 belongs to the ratepayers.

15
16 The fifth adjustment is a reduction of \$6.279 million to reflect the net present value of
17 the EDIT amortization over the life of the stranded cost true-up recovery period, which
18 the Commission has consistently determined belongs to the ratepayers. However, unlike
19 the ITC issue, the net present value of the EDIT amortization is the same amount as the
20 nominal balance. That is true because EDIT is used to reduce rate base and the
21 ratepayers are entitled to a rate of return on the unamortized EDIT balance.

22
23 These fourth and fifth adjustments should be implemented regardless of the fact that the

1 Company has preemptively and imprudently requested an IRS PLR and regardless of
2 whether the IRS issues a PLR in the Company's favor before or after a final order in this
3 proceeding. The Company's request for a PLR aggressively advocated a ruling that
4 would allow the Company to retain the benefits of the ITC and EDIT by finding that
5 returning the ITC and EDIT amounts to ratepayers would result in a normalization
6 violation. Given the Company's egregious behavior, the Commission should place the
7 risk of a normalization violation on the Company, not the ratepayers, so that the
8 Company properly aligns its interests with those of its ratepayers. Alternatively, the
9 Commission could direct the Company to withdraw the pending request for a PLR and
10 prohibit any further requests for a PLR on the ITC and EDIT issues unless and until
11 agreed upon by the PUCT Staff and ratepayer representatives that choose to participate
12 in the drafting of such a request.

13
14 The sixth adjustment is to increase the sales proceeds by \$16.223 million to reduce
15 stranded costs for the lower amount of materials and supplies ("M&S") and fuel
16 inventories that were acquired by the purchasers of the TCC generation assets and
17 directly reflected in the sales proceeds compared to the net book value of those
18 inventories at December 31, 2001. These inventories were depleted by TCC after
19 December 31, 2001 and prior to the sales dates, thus reducing the sales proceeds that
20 were received from the purchasers.

21
22 The seventh adjustment is to eliminate the \$5.499 million in transition costs claimed for
23 employee severance costs due to the mothballing of certain gas fired units. The labor

1 savings retained by TCC due to mothballing these units exceed the severance costs.

2 Thus, there is no economic loss for which the Company should be compensated.

3
4 The eighth adjustment is to reduce the amount of the claimed capacity auction true-up
5 amount by \$31.760 million for amounts that provided the Company a return of and on
6 stranded costs. Such an adjustment is necessary to avoid a double recovery of these
7 costs and to conform the Company's filing to the Commission's decision on this issue in
8 the CenterPoint stranded cost true-up proceeding in Docket No. 29526.

9
10 The ninth adjustment is to reduce the amount of the Company's stranded cost claim by
11 \$30.650 million for the excess mitigation credits ("EMCs") that were paid to and
12 retained by the Company's affiliated retail electric provider ("AREP"). These amounts
13 represent recovery of stranded costs.

14
15 The tenth and eleventh adjustments are to reduce the interest claimed on the stranded
16 cost true-up amounts by \$254.928 million and the interest on the capacity auction true-
17 up amounts by \$64.063 million. The Company's interest computations include
18 numerous errors that should be corrected, some of which reflect the Commission's
19 decisions on the interest computation in the CenterPoint stranded cost true-up
20 proceeding, but nonetheless are incorrect. The tenth adjustment includes the effect of
21 the "retrospective" ADIT benefit, which essentially is an interest computation.

22
23 The final adjustment that I recommend is to reduce the stranded cost claim by \$274.046

1 million for the amount of the "prospective" ADIT benefit, consistent with the
2 Commission's decision and quantification in the CenterPoint securitization proceeding
3 in Docket No. 30485. This amount is in addition to the "retrospective" ADIT benefit
4 that I incorporated in the interest adjustments incorporated in the tenth adjustment that I
5 previously addressed. The adjustment for the prospective ADIT benefit is essential
6 because the Company is not entitled to earn a carrying charge on the before tax, or
7 revenue requirement, effect of its stranded cost true-up amount. Rather, it is entitled to
8 earn a return on its stranded cost true-up amount net of tax, with the tax amount
9 quantified based on the final stranded cost true-up amount times the income tax rate,
10 subject to certain adjustments to the true-up amount.

11
12 I have organized the rest of my testimony to sequentially follow the adjustments in the
13 same order that I addressed them in this summary section.

1 **II. SFAS 109 REGULATORY ASSET SHOULD BE REDUCED BY SFAS 109**
2 **REGULATORY LIABILITIES AND BY THE NET PRESENT VALUE OF THE**
3 **RETURN ON RELATED ADIT GIVING RISE TO THE SFAS 109 REGULATORY**
4 **ASSET**
5

6 **Q. Please describe the Company's request for a SFAS 109 regulatory asset in its**
7 **stranded cost true-up claim.**

8
9 **A. The Company has included \$249.471 million for net SFAS 109 regulatory assets as of**
10 December 31, 2001 in its stranded cost true-up claim. The Company's computation is
11 detailed on Mr. Bartsch's Exhibit JBB-2, a copy of which I have attached as my
12 Exhibit___(LK-2) for reference purposes. This regulatory asset consists of three
13 components equivalent to three offsetting ADIT liability amounts on the Company's
14 balance sheet. The first component of this SFAS 109 regulatory asset is equivalent to
15 the federal ADIT liability amount of \$141.898 million, before gross-up for income taxes
16 on the recovery of this tax amount. The second component is equivalent to the
17 additional federal ADIT liability due to the gross-up for income taxes of \$76.406
18 million. The third component is equivalent to the additional \$31.167 million for the
19 state ADIT liability due to state franchise tax.

20
21 **Q. Did the Company reduce its SFAS 109 regulatory asset claim for the SFAS 109**
22 **regulatory liabilities associated with ITC and EDIT?**

23
24 **A. No. The Company failed to reduce its SFAS 109 regulatory asset claim for the**
25 offsetting ITC and EDIT SFAS 109 regulatory liabilities. The Company also failed to

1 reduce its SFAS 109 regulatory asset claim for the offsetting ITC and EDIT SFAS 109
2 regulatory liabilities in its Docket No. 21528 securitization filing. This is significant
3 because the Commission has not yet ruled on this issue, deferring it from the Company's
4 initial securitization proceeding to this true-up proceeding.

5
6 The Company reconciled its request in this proceeding with its request and the amount
7 allowed in the securitization proceeding, but failed to reduce the regulatory assets in
8 either proceeding by the amount of the SFAS 109 regulatory liabilities. The Company
9 reconciled the regulatory asset amounts not securitized as of December 31, 1998 in
10 Docket No. 21528 with its regulatory asset claim as of December 31, 2001 in this
11 proceeding on Mr. Bartsch's Exhibit JBB-1. I have replicated Mr. Bartsch's Exhibit
12 JBB-1 as my Exhibit____(LK-3) for ease of reference.

13
14 I confirmed that the Company had not reduced its regulatory assets by the SFAS 109
15 regulatory liabilities in the securitization proceeding by reviewing the Company's
16 Application in that proceeding.¹ The Application included a schedule reconciling the
17 net amount of the regulatory assets and liabilities as of December 31, 1998 and the
18 amount claimed in the Company's request in that proceeding. The schedule
19 demonstrates that the Company increased the amount of regulatory assets by adding
20 back the ITC and EDIT SFAS 109 regulatory liabilities. The Application included
21 another schedule detailing the regulatory assets claimed, which excluded the ITC and
22 EDIT SFAS 109 regulatory liabilities. I have replicated these two schedules as my

1 Exhibit____(LK-4).

2

3 **Q. Should the Commission reduce the Company's claimed SFAS 109 regulatory asset**
4 **for the SFAS 109 regulatory liabilities associated with ITC and EDIT?**

5

6 A. Yes. The Company is required to offset regulatory assets with regulatory liabilities in
7 accordance with PURA § 39.302(5). PURA § 39.302(5) defines "regulatory assets" as
8 "the generation-related portion of the Texas jurisdictional portion of the amount reported
9 by the electric utility in its 1998 annual report on Securities Exchange Commission
10 Form 10-K as regulatory assets and liabilities, offset by the applicable portion of
11 generation-related investment tax credits permitted under the Internal Revenue Code of
12 1986." The SFAS 109 regulatory liabilities were included on the Company's accounting
13 books on December 31, 1998 and December 31, 2001. Thus, they must be reflected as
14 reductions to the Company's claimed SFAS 109 regulatory assets.

15

16 **Q. Have you reflected the SFAS 109 ITC and EDIT regulatory liabilities in the**
17 **quantifications provided in the summary section of your testimony?**

18

19 A. Yes. I further discuss the SFAS 109 ITC and EDIT regulatory liabilities and the ITC
20 and EDIT issues, including the quantifications of these amounts, in the following section
21 of my testimony.

22

¹ See Item 1, Supplemental Schedules 4 and 5.

1 Q. Did the Company reduce its SFAS 109 regulatory asset claim by any amount for
2 the ADIT that gave rise to this regulatory asset?

3
4 A. No. The Company failed to reflect any offset to the claimed SFAS 109 regulatory asset
5 for the effects of the ADIT that gave rise to this regulatory asset. In fact, the Company
6 failed to properly report the related amount of ADIT on Schedule IX, a schedule
7 required by the Commission, and which lists the ADIT, ITC, and EDIT amounts as of
8 December 31, 2001. The Company properly reflected the federal ADIT liability amount
9 of \$141.898 million, before gross-up for income taxes on the recovery of this tax
10 amount, on its Schedule IX, but failed to reflect the additional federal ADIT liability for
11 the gross-up for income taxes amount of \$76.406 million or the additional amount of
12 \$31.167 million for state ADIT liability due to state franchise tax.

13
14 Q. Is it correct that the SFAS 109 regulatory asset and the SFAS 109 ADIT are
15 necessarily equivalent on the Company's accounting books?

16
17 A. Yes. SFAS 109 mandates the manner in which the ADIT is to be computed. The
18 regulatory asset is simply the equivalent amount, which includes both the SFAS 109
19 ADIT and the additional SFAS 109 ADIT to reflect the income tax gross-up on the
20 initial balance of the SFAS 109 ADIT. As I noted previously, Mr. Bartsch's Exhibit
21 JBB-2 properly illustrates this computation. The Company simply failed to include the
22 \$76.406 million federal SFAS 109 ADIT gross-up or the \$31.167 million state SFAS
23 109 ADIT on Schedule IX of the filing.

1
2 In addition, the Company agreed that the SFAS 109 regulatory asset and related ADIT
3 were equivalent in its "Answers to SFAS No. 109 Questions Included in the
4 Commission Staff's Filing Package" filed in Docket No. 21528. The Commission
5 Staff's Question No. 9 and the Company's response follow:

6
7 Are the SFAS 109 net asset/liability and the SFAS 109 accumulated
8 deferred tax liability equal amounts? If yes, please provide the net
9 asset/liability amount. If no, please provide the net asset/liability amount as
10 well as the accumulated deferred tax liability amount and explain why the
11 amounts are not equal.

12
13 Answer:

14
15 The SFAS 109 net asset/liability and the SFAS 109 ADIT are equal.
16

17 Q. Should the Commission reduce the Company's SFAS 109 regulatory asset claim by
18 the effect of the underlying SFAS 109 ADIT?

19
20 A. Yes. The Commission already has decided this issue. In Docket No. 21528, the
21 Commission determined that the gross amount of the stranded costs associated with the
22 Company's regulatory assets, including its SFAS 109 regulatory assets, must be offset
23 by the net present value of the benefits due to the ADIT that gave rise to each of those
24 regulatory assets. The Commission stated that "The present value of this [ADIT] benefit
25 is determined by applying the Company's cost of capital to the ADIT balance, adding
26 related taxes to the balances, and discounting the resulting amounts using the
27 Company's pre-tax cost of capital as the discount rate." (Docket No. 21528 Order at 16).

1 In addition, the Commission has utilized this same approach consistently for the other
2 utilities seeking financing orders and in their stranded cost true-up proceedings.

3
4 **Q. What is the amount of the reduction to the Company's claimed regulatory asset for**
5 **the net present value of the return on the unamortized ADIT?**

6
7 **A.** The Commission should reduce the Company's stranded cost true-up claim by \$111.795
8 million for the net present value of the return on the unamortized ADIT. I utilized the
9 correct balance of SFAS 109 ADIT, which was equivalent to the Company's SFAS 109
10 regulatory asset claim, rather than the incorrect and understated amount of ADIT
11 reflected on Schedule IX of the Company's filing. I assumed a 12-year recovery period
12 for purposes of this computation and utilized the Company's UCOS grossed-up rate of
13 return both for the return revenue requirements in the future years and for the discount
14 rate in accordance with prior Commission practice. The net present value will increase
15 if the stranded cost true-up recovery period is shorter and decrease if it is longer. The
16 computations are detailed on my Exhibit____(LK-14).

1 **III. INVESTMENT TAX CREDIT AND EXCESS DEFERRED INCOME TAX**
2 **AMOUNTS SHOULD BE USED TO REDUCE STRANDED COSTS**
3

4 **Q. Please describe the ITC tax benefit.**

5
6 **A. The investment tax credit amount represents tax credits that reduced the Company's**
7 actual taxes paid during the years prior to the advent of retail competition. In prior
8 years, these tax credits were not immediately recognized in rates, but rather were
9 deferred and then amortized over the average life of the generating assets that gave rise
10 to the ITCs as a reduction to the cost of service used to set rates.

11
12 **Q. What is the amount of the Company's ITC tax benefit on a nominal dollar basis as**
13 **of December 31, 2001?**

14
15 **A. The ITC amount is \$102.084 million, stated on a "tax" basis. This is the amount**
16 reflected on Schedule IX in the Company's filing. There is a related SFAS 109
17 regulatory liability of \$54.968 million, reflecting the income tax gross-up on this "tax"
18 basis amount. This SFAS 109 regulatory liability amount was recorded on the
19 Company's accounting books at December 31, 2001 and can be computed by using a
20 gross-up factor of 1 divided by 1 minus the 35% federal income tax rate.

21
22 **Q. What is the amount of the Company's ITC tax benefit on a net present value basis?**
23

1 A. The net present value of the Company's ITC tax benefit amount is \$65.231 million on a
2 "tax" basis, assuming a 12-year stranded cost true-up recovery period. The net present
3 value will increase if the stranded cost true-up recovery period is shorter and decrease if
4 it is longer. I utilized the Company's 7.7% after tax cost of capital as the discount rate
5 for the ITC tax benefit consistent with the Commission's similar use of an after tax cost
6 of capital for this purpose in the CenterPoint stranded cost true-up order in Docket No.
7 29526. The computations of the net present value of the ITC tax benefit and the
8 Company's after tax cost of capital are detailed on my Exhibit___(LK-15).

9
10 **Q. Please describe the EDIT tax benefit.**

11
12 A. Excess deferred income taxes represent income taxes collected from ratepayers in prior
13 years in excess of the Company's actual tax return liabilities and at higher corporate
14 income tax rates than the current 35% federal income tax rate. After the federal
15 corporate income tax rate was reduced, the EDIT tax benefit amount collected from
16 ratepayers in prior years was not immediately recognized in rates. Instead, the EDIT tax
17 benefit amounts were deferred and then amortized over the average life of the generating
18 assets that gave rise to the EDITs to ratepayers as a reduction to the cost of service used
19 to set rates.

20
21 In addition and unlike the ITC amount, the unamortized EDIT amount was used to
22 reduce rate base, thus providing the ratepayers an additional reduction to cost of service
23 over the remaining life of the generating assets that gave rise to the EDITs. The

1 Company confirmed this treatment in response to AVH III-30, stating that "Excess
2 deferred income taxes were a credit to rate base in prior TCC (CPL) rate cases. As a
3 result, EDIT reduced the return that would otherwise have been required on TCC's rate
4 base."

5
6 **Q. What is the amount of the Company's EDIT tax benefit on a nominal dollar basis**
7 **as of December 31, 2001?**

8
9 **A.** The EDIT amount is \$6.279 million, stated on a "tax" basis. This is the amount
10 reflected on Schedule IX in the Company's filing. There is a related SFAS 109
11 regulatory liability of \$3.381 million, reflecting the income tax gross-up on this "tax"
12 basis amount. This SFAS 109 regulatory liability amount was recorded on the
13 Company's accounting books at December 31, 2001 and can be computed by using a
14 gross-up factor of 1 divided by 1 minus the 35% federal income tax rate.

15
16 **Q. What is the amount of the Company's EDIT tax benefit on a net present value**
17 **basis?**

18
19 **A.** The net present value of the Company's EDIT tax benefit amount is the same as the
20 nominal dollar value of this tax benefit. Unlike the ITC tax benefit, the Commission
21 historically has treated the EDIT tax benefit as a rate base reduction. Thus, the net
22 present value of the EDIT tax benefit is the same as the nominal value, assuming that the
23 rate of return on the unamortized amount is the same as the discount rate.

1
2 **Q. In the CenterPoint Order in Docket No. 29526, the Commission did not recognize**
3 **the fact that the EDIT tax benefit was a reduction to rate base. As such, the**
4 **Commission discounted the EDIT tax benefit in the same manner as the ITC tax**
5 **benefit, which was not a reduction to rate base. Should the Commission employ**
6 **this same methodology in this proceeding?**

7
8 **A. No. It is an undisputed fact that the EDIT tax benefit historically was subtracted from**
9 **rate base, thus providing an overall grossed-up rate of return to ratepayers on the EDIT**
10 **tax benefit amount and a reduction in the revenue requirement. If the EDIT tax benefit**
11 **is discounted at the same rate as the overall grossed-up rate of return applied to the**
12 **unamortized nominal dollar amount of this tax benefit over any recovery period, it is a**
13 **mathematical certainty that the net present value is equivalent to the nominal dollar**
14 **value. It would be a conceptual and computational error to understate the net present**
15 **value of the EDIT tax benefit by quantifying it in the same manner as the ITC.**

16
17 **Q. Did the Company reduce its stranded cost true-up claim by the ITC and EDIT tax**
18 **benefit amounts and by the related ITC and EDIT SFAS 109 regulatory liability**
19 **amounts?**

20
21 **A. No. The Company did not reduce its stranded cost true-up claim by the ITC and EDIT**
22 **tax benefit amounts. In addition, the Company failed to reduce its SFAS 109 regulatory**
23 **asset claim by the amounts of the SFAS 109 regulatory liabilities related to the ITC and**

1 EDIT amounts. These SFAS 109 regulatory liabilities were recorded on the Company's
2 books at December 31, 1998 and December 31, 2001, but were not reflected in the
3 Company's filing as a reduction to its stranded cost true-up claim.
4

5 **Q. How should the ITC and EDIT tax benefit amounts be incorporated in the**
6 **stranded cost true-up amount?**
7

8 **A.** The Commission should utilize the net present value of these two tax benefit amounts as
9 a reduction to the stranded cost true-up amount. The Commission did so in the
10 CenterPoint stranded cost true-up proceeding. However, the Commission should
11 compute the net present value of the EDIT tax benefit in the manner I previously
12 described.
13

14 **Q. Why should the Commission reject the Company's attempt to retain these ITC and**
15 **EDIT tax benefit amounts?**
16

17 **A.** First, the Statute requires that the Commission recognize ITC tax benefits to reduce
18 stranded cost. PURA § 39.302 states that:

19
20 **"Regulatory assets" means the generation-related portion of the Texas**
21 **jurisdictional portion of the amount reported by the electric utility in its**
22 **1998 annual report on Securities and Exchange Commission Form 10-K as**
23 **regulatory assets and liabilities, offset by the applicable portion of**
24 **generation-related investment tax credits permitted under the Internal**
25 **Revenue Code of 1986. (emphasis added)**
26

1 Second, the Commission already has rejected the Company's position in Docket No.
2 22352. In its Docket No. 22352 Order, the Commission stated the following

3
4 The Commission agrees that investment tax credits (ITCs) should be
5 included in ECOM in this proceeding. ITCs were not included in the
6 *Securitization Cases* because they were applicable to assets not securitized
7 there. Because all non-securitized assets, including the remaining regulatory
8 assets, are used in this proceeding to calculate stranded costs, *the ITCs must*
9 *be included in the stranded cost calculation . . .*

10
11 The Commission cannot agree with those parties who assert that inclusion
12 of the ITCs in this proceeding would violate federal income tax
13 normalization rules. (emphasis added).
14

15
16 In that same Order, the Commission stated the following in its Findings of Fact:

17 101. PURA §39.302(5) requires that investment tax credits (ITCs) be
18 used to offset the amount of regulatory assets.

19 102. Some parties argued that because ITCs were not included in the
20 *Securitization Cases*, they must be included in the stranded-cost
21 calculation.
22

23 103. The Commission addressed the ITC issue in *Generic Proceeding*
24 Order No. 14.
25

26 104. It is reasonable to include ITCs in the stranded cost calculation.
27 The Commission, however, will re-examine the issue should such
28 inclusion result in a violation of Internal Revenue Service (IRS)
29 normalization rules.
30

31 105. No party has presented to the Commission a ruling by IRS on this
32 issue related to a utility in Texas.

33
34 In Conclusion of Law 16, the Commission stated "The generation-related ITCs are
35 included within the definition of stranded cost (*see* PURA §39.252(7)) and the

1 applicable portion of ITCs are included within the definition of regulatory assets. (*see*
2 PURA §39.302(5))."

3
4 Third, the Commission already has determined in the Texas New Mexico Power
5 Company and CenterPoint stranded cost true-up proceedings that the ITC and EDIT
6 tax benefits must be used to reduce stranded costs, despite similar arguments by those
7 utilities that this could result in a normalization violation.

8
9 Fourth, the ITC and EDIT tax benefit amounts represent taxes collected from ratepayers
10 in previous years that never will be paid to the federal government. Under traditional
11 regulation, the utility was allowed to temporarily retain these tax benefits by deferring
12 and amortizing them to the ratepayers over the life of the generating assets.
13 Fundamentally, the amounts belong to the ratepayers, not the Company.

14
15 Fifth, pursuant to the Statute, the Commission must quantify stranded cost on a net
16 basis. The Company's claim is unreasonable because it is not computed on a net basis. It
17 reflects only the stranded cost, including tax-related regulatory assets, but not the
18 stranded benefits, including tax-related regulatory liabilities such as the ITC and EDIT.

19
20 Sixth, the statute prohibits the Company from overrecovering stranded cost. If the
21 Commission does not reflect the ITC and EDIT amounts, the Company necessarily will
22 overrecover its stranded cost.
23

1 Finally, the ITC and EDIT tax benefits for numerous utilities have been utilized to
2 reduce stranded costs in other states, including Pennsylvania and Connecticut.

3
4 **Q. What is the Company's stated basis for its failure to reduce its stranded cost claim**
5 **by the ITC and EDIT tax benefit amounts?**

6
7 A. The Company's stated basis for its failure to do so is the alleged uncertainty as to
8 whether the use of these amounts as a reduction to the stranded cost true-up amounts
9 will constitute a normalization violation. The Company has sponsored the testimony of
10 Mr. James Warren to argue that the use of these two tax benefits to reduce the stranded
11 cost true-up claim will result in a normalization violation. The Company also has filed a
12 request for PLR with the IRS, drafted by Mr. Warren, wherein it makes the same
13 arguments in opposition to the use of these tax benefits to mitigate stranded costs for the
14 benefit of ratepayers.

15
16 **Q. Has the Commission already addressed the Company's and other utilities' claims**
17 **of a potential normalization violation?**

18
19 A. Yes. The Commission already addressed this issue on a generic basis, which it then
20 applied to Texas Central Company in its Docket No. 22352 Order. I previously cited
21 the Commission's discussion in that Order wherein it rejected the utilities' attempts to
22 exclude ITCs from the stranded cost quantification. The Commission also addressed
23 the utilities' claims that a normalization violation could result, stating the following:

1
2 The Commission cannot agree with those parties who assert that inclusion
3 of the ITCs in this proceeding would violate federal income tax
4 normalization rules. Pacific Gas & Electric (PG&E) asserted that
5 normalization is not a factor in determining ECOM and the ITCs have been
6 used to offset ECOM in other states without an Internal Revenue Service
7 (IRS) ruling that such inclusion violates normalization rules. The
8 Commission makes no determination on this issue, but does note that no
9 party has brought to its attention any IRS ruling that normalization rules
10 would be violated by including ITCs in an ECOM determination. If,
11 however, inclusion of the ITCs in the model is determined to result in
12 violation of IRS normalization rules, as argued by Reliant, Texas-New
13 Mexico Power Company (TNMP), and PG&E, the Commission will re-
14 examine the issue.
15

16
17 Q. Since the Commission's Docket No. 22352 Order, have there been any IRS rulings
18 that normalization rules would be violated by including ITCs or EDITs in the
19 stranded cost quantification?
20

21 A. No. However, since the Commission's Docket No. 22352 Order, the IRS has issued
22 proposed Regulations that specifically address the ITC and EDIT issues in the context
23 of utility industry restructuring and deregulation. The proposed Regulations conclude
24 that reductions in cost of service rates for the generation ITC and EDIT amounts are
25 consistent with the normalization requirements of the Internal Revenue Code ("IRC").
26 In its Notice of Proposed Rulemaking, the IRS describes the proposed Regulations as
27 follows:
28

29 The proposed regulations permit a utility whose electricity generation
30 assets cease to be public utility property to return to their ratepayers the
31 normalization reserves for excess deferred income taxes (EDFIT) and
32 accumulated deferred investment tax credits (ADITC) with respect to those
33 assets.
34

1 The proposed regulations provide that utilities whose generation assets
2 cease to be public utility property, whether by disposition, deregulation,
3 or otherwise, may continue to flow through EDFIT and ADITC reserves
4 associated with those assets without violating the normalization rules.
5

6
7 I have attached a copy of the proposed Regulations as my Exhibit_(LK-5). It is
8 important to note that the IRC and Regulations apply to all similar entities, unlike PLRs,
9 which are fact-specific and apply only to the taxpayer requesting such a ruling. As such,
10 the proposed Regulations supersede the precedential value, if any, of PLRs that address
11 the same issue for specific taxpayers.
12

13 **Q. Has the IRS issued PLRs that, although taxpayer-specific, address the use of EDIT**
14 **and ITC to reduce stranded cost recovery through regulated rates?**
15

16 **A. Yes.** There are three IRS PLRs that address the issues in conjunction with electric
17 industry restructuring, LTR 9852030, LTR 20004038, and LTR 200016020. I have
18 attached a copy of each of these PLRs as my Exhibit__(LK-6), Exhibit__(LK-7),
19 and Exhibit__(LK-8), respectively. These PLRs may not be cited as precedent and are
20 taxpayer and fact specific. Nevertheless, PLRs frequently are cited in regulatory
21 proceedings by utilities to bolster their assertions of potential normalization violations.
22

23 L TR 9852030 specifically affirmed that the ITC could be used to reduce stranded cost
24 recoverable through a non-bypassable competitive transition charge. LTR 20004038
25 and LTR 200016020 both addressed the situation where there was both a net book gain
26 and a net tax gain on the sale of generation assets. The IRS determined under that fact

1 basis that ITCs could not be used to reduce transmission and distribution rates subject to
2 cost of service regulation through a negative transition charge, a fact base that does not
3 exist in this proceeding.

4
5 However, LTR 20004038 and LTR 200016020 are instructive in the sense that the IRS
6 stated that "As a result of the sale, the reserves cease to exist" and "Once the asset is
7 sold, the regulatory life ceases to exist." In other words, the reserves do not represent
8 taxes that will be paid upon recovery of any competitive transition charge.

9
10 In any event, these latter two PLRs and any others issued prior to the issuance of the
11 proposed Regulations no longer have any precedential value given the clear statement
12 of position expressed by the IRS in the proposed Regulations.

13
14 **Q. Has the IRS issued any other PLRs addressing the potential for a normalization**
15 **violation requested subsequent to the requests resulting in LTR 20004038 and**
16 **LTR 200016020?**

17
18 **A.** No. Subsequent to the requests resulting in LTR 20004038 and LTR 200016020, the
19 United Illuminating Company filed a request for letter ruling with the IRS pursuant to an
20 order issued by the Department of Public Utility Control ("DPUC"). In that Order, the
21 DPUC stated "There is no dispute that, absent restructuring, the benefits of deferred ITC
22 and EDIT would flow through to ratepayers over the life of the plant. The Department

1 believes that ratepayers are entitled to these benefits and restructuring should not deprive
2 them of these benefits." Accordingly, the DPUC ordered:

3
4 By July 12, 1999, and prior to filing the PLR request with the IRS, it shall
5 submit the [draft] request to the Department for review. UI shall certify
6 that it provided an opportunity to the OCC and CIEC [Connecticut
7 Industrial Energy Consumers, representing large users of electricity on the
8 UI system] to participate fully in the drafting of the request and that said
9 participation by OCC and CIEC shall continue with respect to any
10 subsequent responses or submission to the IRS pertaining to this matter.

11
12 By July 19, 1999, UI shall notify the Department that it has requested a
13 PLR from the IRS that the flow through to ratepayers of the deferred
14 investment tax credits and excess deferred income taxes related to the
15 Bridgeport Harbor and New Haven Harbor fossil plants will not constitute
16 a normalization violation.

17
18 UI shall keep the deferred investment tax credit and excess deferred
19 income taxes in their existing accounts pending receipt and review of the
20 IRS PLR by the Department.
21

22
23
24 I personally worked with Mr. Warren, then employed by PriceWaterhouseCoopers and
25 retained by United Illuminating for this purpose, to draft a request for letter ruling
26 specifically seeking a determination that there would NOT be a normalization
27 violation if that Company's ITC and EDIT amounts were used to reduce stranded
28 costs. This is the same Mr. Warren who has filed testimony in this proceeding on
29 behalf of the Company arguing the exact opposite position. Together, we developed
30 the request for letter ruling detailing the reasons why we believed that the IRS should
31 issue a private letter ruling in favor of UI's request to provide the ITC and EDIT to
32 ratepayers. The UI request for ruling is attached as my Exhibit___LK-9).
33

1 In addition, I also personally worked with Mr. Warren to develop a presentation to the
2 IRS to argue in person during a conference of right that the use of ITC and EDIT
3 amounts to reduce stranded costs recoverable from ratepayer would not constitute a
4 normalization violation. Although Mr. Warren made the formal presentation, I was
5 actively involved in the conference of right and personally addressed many of the
6 concerns raised by the IRS at that meeting. The outline for the formal presentation is
7 attached as my Exhibit____(LK-10).

8
9 **Q. Please describe the Company's request for a PLR on the ITC and EDIT tax**
10 **benefits issues.**

11
12 A. Shortly after it filed its stranded cost true-up claim, the Company filed a request with the
13 IRS on June 28, 2005 for a PLR to buttress its position against providing the ITC and
14 EDIT tax benefits to ratepayers in this or any other proceeding. This request was drafted
15 by the Company's outside tax counsel, directed by Mr. James Warren, the Company's
16 witness on this issue in this proceeding and also the witness for Texas-New Mexico
17 Power Company on the ITC issue in its stranded cost proceeding. The request,
18 ostensibly limited to the Company as the taxpayer, is replete with references to Texas-
19 New Mexico Power Company and CenterPoint Energy Houston Electric, LLC, which
20 will have the practical effect of expanding the effect of any PLR issued for TCC to those
21 other companies as well.

1 Q. Did the Company's request for a PLR seek an affirmative ruling that the
2 Commission's Orders in the Texas-New Mexico and CenterPoint stranded cost
3 proceedings on the ITC and EDIT issues would not result in a normalization
4 violation if applied to TCC?

5
6 A. No. The request seeks a preemptive ruling from the IRS against the Commission and
7 against its ratepayers arguing that the PUCT's treatment of ITC and EDIT in the Texas-
8 New Mexico Power Company and CenterPoint Energy Houston Electric LLC stranded
9 cost proceedings would constitute normalization violations if the PUCT made similar
10 determinations in TCC's stranded cost proceeding. Attached to the request were copies
11 of the PUCT's final orders in the Texas-New Mexico and CenterPoint stranded cost
12 true-up proceedings.

13
14 The Company's request for PLR seeks the following three specific rulings, with the
15 Company aggressively arguing the position that there will be a normalization violation if
16 the PUCT provides the ITC and EDIT tax benefits to ratepayers.

- 17
18 1. Whether or not the Company will violate the requirements of the
19 investment tax normalization rules set forth in Former Code section
20 46(f) if it is ordered by the PUCT to reduce its stranded costs by the net
21 present value of its ADITC associated with its generation assets.
22
23 2. Whether or not the Company will violate the requirements of the
24 depreciation normalization rules set forth in Former Code section
25 167(1), Code Section 168, and section 203(e) of the '86 Act if it is
26 ordered by the PUCT to reduce its stranded costs by the net present
27 value of its EDFIT associated with its generation assets.
28

1 3. If the Proposed Regulations (defined below) are adopted in precisely
2 the same form as proposed and Company makes the retroactivity
3 election, Company will not violate the requirements of the investment
4 tax credit and/or depreciation normalization rules if it is ordered by
5 the PUCT to return its ADITC and or EDFIT associated with its
6 generation assets to ratepayers through a method that is economically
7 equivalent to that provided in the Proposed Regulations.
8

9 The Company also used the request for PLR to strenuously argue against the proposed
10 Regulations, thereby effectively supplementing previous comments opposing the
11 proposed Regulations that were submitted by Mr. Warren to the IRS in 2003.
12

13 Q. Is it likely the IRS will issue a PLR in response to the Company's request before
14 the PUCT issues a final Order in this proceeding?
15

16 A. No. The IRS issued the proposed Regulation on March 4, 2003 addressing the ITC and
17 EDIT issues specifically within the context of deregulation of the generation function.
18 The proposed Regulations specifically hold that normalization violations will not occur
19 in such cases if these tax benefits are provided to ratepayers upon the deregulation of the
20 generation function. These proposed Regulations are not yet final, but it is extremely
21 unlikely that the IRS will issue a taxpayer-specific PLR regarding this matter until the
22 proposed Regulations are finalized. As I noted earlier, the IRS has yet to rule on the UI
23 request for PLR, which has been pending since 2000.
24

1 **Q. Did the Company act prudently by seeking an IRS Private Letter Ruling asserting**
2 **that the ITC and EDIT tax benefits, if provided to ratepayers, would constitute**
3 **normalization violations?**

4
5 A. No. First, this request is absolutely opposed to ratepayer interests. The reason the
6 Company requested a PLR is evident. It is an important element of the Company's
7 litigation strategy to retain the ITC and EDIT benefits. The worst scenario from the
8 Company's perspective is that the IRS adopts the proposed Regulations in final form
9 and issues a PLR for the Company that conforms to those Regulations. In that event, the
10 result is the same as ordered previously by the Commission for Texas-New Mexico
11 Power and CenterPoint. The best scenario from the Company's perspective, of course,
12 is that it will be able to retain the ITC and EDIT tax benefits. Thus, as a litigation
13 strategy, the Company has nothing to lose and everything to gain from drafting its
14 request and aggressively arguing against ratepayers interests. Conversely, the
15 Company's ratepayers have everything to lose and nothing to gain from this approach.

16
17 Second, the PLR request clearly seeks to undermine and effectively invalidate the PUCT
18 decisions in the other stranded cost true-up proceedings on the ITC and EDIT tax benefit
19 issues. Thus, the request for PLR is a collateral attack before another agency on the
20 Commission's prior decisions.

21
22 Third, the request aggressively argues against providing these benefits to ratepayers.
23 The request selectively identified and interpreted PLRs that addressed ITC and EDIT

1 issues that were issued before the proposed Regulations, arguing that the IRS precedent
2 unequivocally supported the conclusion that there would be normalization violations if
3 these tax benefits were provided to ratepayers. The Company's request stated:

4
5 **The type of stranded cost offsets imposed by the PUCT in the True-Up**
6 **proceedings to date (the TNMP and CenterPoint orders) clearly effects the**
7 **provision of generation-related ADITC and EDFIT benefits to regulated**
8 **customers by reducing amounts for which they would otherwise be**
9 **responsible. Accordingly, to the extent that the historical view consistently**
10 **applied by the Service over many years is applicable to Company's**
11 **situation, it is apparent that a violation of the normalization rules would**
12 **occur should Company be ordered to offset its stranded cost by any amount**
13 **of its generation related ADITC and/or EDFIT.**
14

15 In addition, the request aggressively attacked the proposed Regulations, arguing that
16 they were inconsistent with the precedent established through the cited PLRs, with the
17 Internal Revenue Code, and with the legislative intent of the relevant provisions of the
18 Internal Revenue Code. The request concluded that the proposed Regulations "represent
19 a break with the way in which the Service has historically approached the ITC and
20 depreciation normalization rules."

21
22 **Q. Is there any other evidence of imprudence in the Company's request for PLR?**
23

24 **A.** Yes. The Company failed to allow the participation of the PUCT Staff or any other
25 party representing ratepayer interests in drafting the request for PLR. The request was
26 drafted by Mr. Warren and Robert Friedman of Thelen Reid & Priest, LLC and then
27 reviewed by AEPSC employees Mr. Carpenter, Mr. Brewer, Mr. King, Mr. Pyle, and
28 Mr. Hutchins, according to the Company's response to AVH III-31(b), a copy of which I

1 have attached as my Exhibit__(LK-11). Neither the PUCT Staff nor any other parties
2 were involved in drafting the request.

3
4 The Company's failure to allow the participation of the PUCT Staff or any other party
5 representing ratepayer interests is in direct opposition to the Commission's Docket No.
6 22352 Order that required the Company to allow such participation. The Commission
7 stated in that Order that: "Further, should determination to request an IRS ruling be
8 made, the participation by Commission Staff and other interested parties in drafting the
9 request is essential to ensure a balanced presentation of the question and related facts to
10 the IRS."

11
12 **Q. How should the Commission proceed now that the request for PLR has been**
13 **issued?**

14
15 **A.** First, the Commission should utilize the ITC and EDIT tax benefits as reductions to the
16 Company's stranded cost true-up claim as it did in the Texas-New Mexico and
17 CenterPoint stranded cost true-up proceedings. It should not hold these issues in
18 abeyance or make its determination contingent upon the results of the PLR, assuming
19 one is ever issued.

20
21 Second, the Commission should find the Company imprudent and admonish it for its
22 aggressive opposition to ratepayer interests and for directly violating the Commission's
23 Docket No. 22352 Order regarding the drafting of a request for a PLR.

1
2 Third, the Commission should put the Company on notice that the Company and its
3 shareholder are at risk for a normalization violation, not its ratepayers. In other words,
4 the Company initiated the request for PLR, aggressively argued against its ratepayers,
5 and failed to comply with a Commission Order mandating participation in drafting such
6 a request. Consequently, if the IRS issues a PLR that adopts the Company's position,
7 then the Commission should ensure that the Company suffers the consequences of its
8 imprudent actions, not the ratepayers. If the Company loses the ability to utilize
9 accelerated tax depreciation for tax return purposes, the Commission should impute it
10 due to the Company's imprudent actions. If the Company wants to minimize this risk to
11 its shareholder, it should immediately withdraw the request for a PLR.

12
13 Fourth, the Commission may wish to direct the Company to withdraw its pending
14 request. If it does so, it should insist that the Company not file another request for a
15 PLR unless and until such a request is drafted to support, not argue against, ratepayer
16 interests. In addition, it is essential that any such request be drafted in a manner
17 satisfactory to the PUCT Staff and the other parties in this or any related proceedings
18 before the PUCT in which the effects of the ITC and EDIT tax benefits are at issue.
19

**IV. SALES PRICE SHOULD BE INCREASED TO REFLECT DIMINUTION OF
M&S AND FUEL INVENTORIES PRIOR TO SALE**

**Q. Were the sale prices of the Company's generation assets affected by the amount of
M&S and fuel inventories as of the dates of sale?**

**A. Yes. The Purchase and Sale Agreements ("PSAs") executed between the Company and
the purchasers required the purchasers to pay the net book value of the M&S and fuel
inventories as of the dates of sale. All else equal, the lower the inventory balances on
the dates of sale, the lower the sales prices. To the extent these inventory balances were
higher on the dates of sale, then the sales prices were increased.**

**Q. Please explain how the M&S and fuel inventories affected the sales prices and thus,
the stranded costs in this proceeding?**

**A. These inventory amounts on the dates of sale directly affected the Company's stranded
cost true-up amount. The net book value of the assets sold, including these inventory
amounts, was determined as of December 31, 2001. Yet the sales prices, which were
based on the net book value of these inventory amounts, were determined at the dates of
the sales. As such, the Company could, and indeed did, increase its stranded cost true-
up claim simply by reducing its inventories after December 31, 2001 by \$16.223
million. In effect, the Company utilized its inventory balances to mitigate its post-
deregulation generation expenses for the benefit of its shareholder rather than mitigating
its stranded costs for the benefit of its ratepayers.**

1

2 **Q. Is the Company under an obligation to mitigate its stranded costs?**

3

4 A. Yes. The Company is entitled to recover only its "net, verifiable, nonmitigable stranded
5 costs" in accordance with the requirements of PURA § 39.252(a). Clearly, in this
6 instance, the Company could have mitigated its stranded costs by maintaining at least
7 the level of M&S and fuel inventory balances that existed at December 31, 2001. The
8 inventory amounts were within its control and could have been used to mitigate stranded
9 costs.

10

11 **Q. Should the Commission adjust the sales proceeds upwards to reflect the effects of**
12 **the Company's attempts to inflate stranded costs?**

13

14 A. Yes. The Commission should increase the net value realized from the sales by \$16.223
15 million to restate the sales price as if the Company had not drawn down its M&S and
16 fuel inventories prior to the asset sales. My computations are detailed on my
17 Exhibit___(LK-12).

18

**V. TRANSITION COSTS FOR PLANT EMPLOYEE SEVERANCE SHOULD BE
REJECTED**

Q. Please describe the Company's request for transition costs due to plant employee severance costs.

A. The Company increased its stranded cost true-up claim by adding \$5.499 million to the net book value as of December 31, 2001 for plant employee severance costs. This amount also included "retention payments" to retain certain skilled employees. The Company incurred these plant employee severance costs as the result of mothballing certain of its uneconomic gas-fired generation. In its filing, the Company did not include retention payments made in 2000 and 2001 of \$0.626 million, but claimed in response to discovery that this was an oversight.

Q. What is the Company's statutory basis for its request for transition costs due to plant employee severance costs?

A. The Company has claimed these costs pursuant to PURA § 39.906, which states that "the commission shall allow the recovery of reasonable employee-related transition costs incurred and projected for severance, retraining, early retirement, outplacement, and related expenses for the employees."

Q. Are these employee plant severance costs "reasonable," as required by PURA § 39.906?

1

2 A. No. The amount of costs claimed is not "reasonable" because the Company failed to
3 reduce the gross amount of these costs by the amount of savings that it achieved as the
4 result of the employee terminations. The Company's severance plan provided
5 employees at the mothballed plant two weeks of pay for each year of service and up to
6 eighteen months of medical and dental employee benefits at a reduced cost.

7

8 Since these employees were terminated, the Company has achieved and retained savings
9 in labor and benefits costs that have exceeded the cost of the severance plan each and
10 every year, based on the information in the Company's response to Staff's Second
11 Request Question MJ2-7. In other words, the Company will have achieved and retained
12 savings some three times greater than the costs it incurred by the date of the
13 Commission's final order in this proceeding. Most of the employees were terminated in
14 December 2002. The rest were terminated in mid-2003. The terminated employees had
15 an average of 21 years of service and received approximately 42 weeks of severance pay
16 on average. Consequently, the amounts paid in severance alone result in recurring
17 equivalent savings every 42 weeks thereafter.

18

19 Q. Should the Commission allow these transition costs in the stranded cost true-up
20 amount?

21

22 A. No. Fundamentally, the Company has incurred no net costs. To the contrary, it has
23 achieved and retained net savings. The utility is allowed only to recover its "net,

1 verifiable, nonmitigable stranded costs" in accordance with PURA § 39.252(a) and any
2 transition costs pursuant to PURA § 39.906 must be "reasonable," not excessive and
3 unreasonable. The Company had no net transition costs, only net savings, and it was
4 more than able to mitigate those costs through the achieved and retained savings. Thus,
5 there is no reasonable basis for including any amount of the Company's transition cost
6 claim.

7

1 **VI. CAPACITY AUCTION TRUE-UP SHOULD BE REDUCED TO REFLECT**
2 **RETURN OF AND ON STRANDED COSTS**
3

4 **Q. Has the Company reflected the return of and on stranded costs recovered through**
5 **the capacity auction proceeds as a reduction to its stranded cost true-up claim?**
6

7 **A. No. The Company disagrees with the Commission's interpretation of the Texas**
8 **Supreme Court decision on this issue in the CenterPoint stranded cost true-up**
9 **proceeding. However, it did quantify the amount of the return of and on stranded costs**
10 **recovered through the capacity auction proceeds at \$31.760 million, presumably in**
11 **accordance with the Commission's final Order in the CenterPoint stranded cost true-up**
12 **proceeding.**
13

14 **Q. Should the Commission reflect the return of and on stranded costs recovered**
15 **through the capacity auction proceeds as a reduction to the Company's stranded**
16 **cost true-up claim?**
17

18 **A. Yes. First, it is essential that such an adjustment be made in order to avoid double**
19 **recovery of these costs both as a stranded cost and through the capacity auction true-up.**
20 **Second, the Commission already has determined that such an adjustment was necessary**
21 **in the CenterPoint stranded cost true-up proceeding. Third, the Company has offered no**
22 **substantive argument in opposition to this adjustment, but rather has offered a legal**
23 **witness to address the legislative intent and interpretation of the statute, concluding that**
24 **as a legal matter the stranded cost and capacity auction true-up amounts must be**

1 independently quantified. This is nothing but an initial step in another attack on the
2 Supreme Court decision and it should be rejected.

3

4

VII. EXCESS MITIGATION CREDITS RETAINED BY THE AREP SHOULD BE
USED TO REDUCE STRANDED COSTS

Q. The Company was directed in Docket No. 22352 to amortize the excess earnings component of its EMCs over five years as a reduction to the nonbypassable delivery charges to the REPs commencing January 1, 2002. The EMC amount and refund period were subsequently reduced due to corrections addressed in Docket No. 29938, which the Company has sought to confirm in Docket No. 31126. Was a portion of the EMCs refunded to and retained by the Company's AREP?

A. Yes. The total EMCs provided to the Company's AREP, including interest paid by TCC, was \$30.650 million through August 2005. The Company actually refunded \$28.890 million, including interest, to its AREP (CPL Retail Energy, LP initially, then Centrica after it was sold) from January 1, 2002 through June 2005. I computed this amount by summing the monthly EMC credits to the AREP through June 2005. The monthly amounts refunded to the AREP were provided by the Company in response to Cities 17-SN-1.

The AREP received 61.12% of the total \$47.269 million passed through to all REPs during the same time period. I computed this percentage using the total amounts, including interest paid by TCC, actually or projected to be refunded through June 2005 on Exhibit RWH-6 in the Company's stranded cost true-up filing. I applied the same 61.12% ratio for the estimated refunds in July through August 2005. I relied on the Company's assumptions that the last EMC payments would occur in August 2005,

1 although the Commission's decision in Docket No 31126 could result in the last
2 payment in July 2005. I have attached the referenced discovery responses and the
3 computations as my Exhibit___(LK-13).
4

5 **Q. To the extent the Company's AREP retained the excess mitigation credits provided**
6 **through the nonbypassable delivery charges should the Commission utilize these**
7 **amounts to reduce the Company's stranded cost true-up claim?**
8

9 **A. Yes. To the extent that the Company cannot demonstrate excess mitigation credits were**
10 **directly received by price to beat customers from the AREP, then the Company actually**
11 **has recovered this amount of its stranded cost claim and its claim should be reduced**
12 **accordingly.**
13

VIII. INTEREST AMOUNTS SHOULD BE REDUCED TO CORRECT ERRORS

Q. Please summarize the errors reflected in the Company's interest amounts included in its stranded cost true-up claim.

A. First, the Company failed to reduce the stranded cost interest base for ADIT in any month during the period January 1, 2002 through September 30, 2005.² The failure to do so is partially remedied for the years 2002 and 2003 through the ECOM component of the capacity auction true-up computation given that the ADIT was a rate base reduction in the ECOM revenue requirement amounts. The Commission incorporated this reduction in the CenterPoint stranded cost true-up claim as the retrospective ADIT benefit. However, I have reflected this retrospective ADIT benefit as a reduction to the interest claim. The stranded cost interest should be reduced by \$89.305 million for this issue. The computations are detailed on my Exhibit___(LK-16).

Second, the Company failed to reduce the capacity auction proceeds interest base for ADIT in any month during the period January 1, 2002 through September 30, 2005. The capacity auction proceeds are stated on a revenue requirements, or before tax, basis. The interest base should be net of tax, or reduced by the ADIT, before the interest rate is

² I have used the term "interest base" to mean the stranded cost amount, including compounded interest, against which the carrying charge rate is applied to compute the interest each month from January 1, 2002 through September 2005.

1 applied. The capacity auction interest should be reduced by \$60.026 million for this
2 issue. The computations are detailed on my Exhibit____(LK-17).

3
4 Third, the stranded cost interest should be computed at the Company's after tax cost of
5 capital and then grossed-up to a revenue requirement amount. This ensures that the
6 Company is not retrospectively provided a return on amounts that it did not have to pay
7 the federal government during the retrospective period. It is appropriate to gross-up the
8 after-tax amount as the last step in the final stranded cost true-up quantification because
9 the Company will have to pay income taxes prospectively as it recovers the stranded cost
10 balance. The stranded cost interest should be reduced by \$30.791 million for this issue.
11 The computations are detailed on my Exhibit____(LK-18).

12
13 Fourth, the capacity auction true-up interest also should be computed at the Company's
14 after tax cost of capital and then grossed-up to a revenue requirement amount. Similar
15 to the stranded cost interest, this ensures that the Company is not retrospectively
16 provided a return on amounts that it did not have to pay the federal government during
17 the retrospective period. It is appropriate to gross-up the after-tax amount as the last
18 step in the final stranded cost true-up quantification because the Company will have to
19 pay income taxes prospectively as it recovers the stranded cost balance. The Company's
20 capacity auction interest should be reduced by \$4.038 million for this issue. The
21 computations are detailed on my Exhibit____(LK-19).

1 Fifth, the Company failed to reduce the stranded cost interest base by the amount of the
2 EDIT tax benefit. The Company is not entitled to retain the carrying charge benefit of
3 the EDIT during the period January 1, 2002 through September 2005. In addition, the
4 Commission determined in the CenterPoint proceeding that the stranded cost interest
5 base should be reduced by the EDIT tax benefit amount. The Company's stranded cost
6 interest should be reduced by \$3.083 million for this issue. The computations are
7 detailed on my Exhibit____(LK-20).

8
9 Sixth, the Company failed to reduce the stranded cost interest base by the net present
10 value amount of the ITC tax benefit. The Commission used the net present value
11 amount of the ITC tax benefit to reduce the stranded cost interest base in the CenterPoint
12 stranded cost proceeding. The Company's stranded cost interest should be reduced by
13 \$32.032 million for this issue. The computations are detailed on my Exhibit____(LK-
14 21).

15
16 Seventh, the Company failed to reduce the stranded cost interest base by the amount of
17 the depreciation (return of stranded costs) recovered through the capacity auction
18 proceeds. The Commission used these cumulative amounts each month to reduce the
19 stranded cost interest base in the CenterPoint stranded cost proceeding. The Company's
20 stranded cost interest should be reduced by \$81.426 million for this issue. The
21 computations are detailed on my Exhibit____(LK-22).

22

1 Eighth, the stranded cost interest base must be reduced for the adjustment to increase the
2 generation asset sales prices for the decline in the M&S and fuel inventory balances that
3 I previously addressed. The Company's stranded cost interest should be reduced by
4 \$7.967 million for this issue. The computations are detailed on my Exhibit____(LK-23).

5
6 Ninth, the stranded cost interest base must be reduced for the adjustment to remove
7 severance costs associated with the mothballed units that I previously addressed. The
8 Company's stranded cost interest should be reduced by \$2.700 million for this issue.
9 The computations are detailed on my Exhibit____(LK-24).

10
11 Tenth, the stranded cost interest base must be reduced for the cumulative amount of
12 EMCs that were paid to and retained by the AREP. The company's stranded cost
13 interest should be reduced by \$7.624 million for this issue. The computations are
14 detailed on my Exhibit____(LK-25).

15
16 **Q. Why should the Commission reduce the stranded cost interest base for ADIT?**

17
18 **A.** Fundamentally, these are funds that have been provided by ratepayers for taxes in
19 advance of the payment of those amounts by the Company to the government.
20 Historically, the Commission has used the ADIT amounts to reduce the Company's
21 revenue requirement by subtracting the ADIT amounts from rate base. This
22 methodology provided ratepayers a rate of return on the ADIT amounts at the

1 Company's grossed-up weighted average cost of capital. The Commission's traditional
2 ratemaking treatment is recognized explicitly in the ECOM revenue requirement
3 computation. As such, the ADIT that was used as a reduction to rate base in the ECOM
4 component of the capacity auction true-up computation effectively reduced the capacity
5 auction true-up amount. Finally, the Commission recognized that the ADIT should be a
6 reduction from rate base from January 1, 2004 through the date of a securitization order
7 and termed this reduction to stranded costs as the "retrospective ADIT benefit."

8
9 **Q. Why did you characterize the retrospective ADIT benefit as a correction to the**
10 **Company's interest claim in this proceeding?**

11
12 **A.** The Commission quantified the retrospective ADIT benefit in the CenterPoint
13 securitization proceeding for logistical reasons, but this retrospective quantification is
14 not dependent upon the duration of the stranded cost recovery period or the cost of
15 securitization financing. This quantification is an inherent component of the stranded
16 cost true-up quantification because it is tied to the actual ADIT amount during the
17 retrospective period, not the computed ADIT used by the Commission to quantify the
18 prospective ADIT benefit.

19
20 **Q. What is the correct amount of ADIT that should be used to reduce the stranded**
21 **cost interest base?**

1 A. The stranded cost interest base should be reduced by \$437.306 million, which is the
2 non-SFAS 109 ADIT listed on the Company's Schedule IX. I previously utilized the
3 \$141.898 million amount from Schedule IX, which represents the offset to the SFAS
4 109 regulatory asset before the income tax gross-up, to quantify the reduction to the
5 SFAS 109 regulatory asset for the related ADIT. The \$141.898 million SFAS 109
6 amount is described on Schedule IX as the Equity AFUDC related ADIT. Accordingly,
7 I have reduced the total ADIT balance of \$579.204 million amount from Schedule IX by
8 the \$141.898 million previously utilized to prevent double counting interest on that
9 amount.

10
11 **Q. Why should the Commission reduce the capacity auction true-up interest base for**
12 **ADIT?**

13
14 A. The capacity auction true-up amounts represent ECOM revenue amounts that the
15 Company did not recover through the capacity auction process. Accordingly, it did not
16 have to pay income taxes on the amounts it did not recover. Thus, it would be improper
17 to provide the Company with a return on income tax amounts that it never paid. This is
18 no different conceptually than subtracting ADIT due to accelerated tax depreciation
19 from rate base for traditional ratemaking purposes or to compute the interest on stranded
20 costs for true-up purposes.

1 **Q.** **Why should the Commission compute the stranded cost interest at the Company's**
2 **after tax cost of capital and then gross-up the after tax interest to a revenue**
3 **requirement amount?**

4
5 **A.** This ensures that the Company is not retrospectively provided a return on amounts that
6 includes income taxes that it did not have to pay the federal government during the
7 retrospective period, but will have to pay prospectively as it recovers the stranded cost
8 balance. The Commission recognized this issue in the CenterPoint stranded cost interest
9 computation. In the CenterPoint proceeding, the Commission computed the interest on
10 the stranded costs at the grossed-up weighted average cost of capital, but compounded it
11 at the after tax cost of capital.

12

**IX. PROSPECTIVE ADIT BENEFIT SHOULD BE USED TO REDUCE
STRANDED COSTS**

Q. Please describe the Commission's quantification of the prospective ADIT benefit in the CenterPoint securitization proceeding.

A. The Commission quantified this benefit by discounting the reduction in the future years' revenue requirement associated with this rate base reduction. The Commission first quantified the nominal dollar amount of the ADIT balance by multiplying its quantification of stranded cost, adjusted to remove certain items, by the income tax rate. The Commission then used the Company's UCOS grossed-up overall rate of return applied to the unamortized ADIT balance each year to quantify the reduction in the revenue requirement due to this tax benefit. The Commission amortized the ADIT balance over the stranded cost recovery period to quantify the annual unamortized ADIT balance remaining each year. Finally, the Commission computed the net present value of the prospective ADIT benefit by discounting the future years' annual reductions in the revenue requirement using the Company's grossed-up overall rate of return.

Q. Have you made a similar quantification for the Company's prospective ADIT benefit in this proceeding?

A. Yes. The net present value of the Company's prospective ADIT benefit in this proceeding is \$274.046 million. Similar to my quantification of the ITC tax benefit, I

1 utilized a twelve year stranded cost recovery period and the Company's grossed-up
2 overall rate of return to compute the future years' annual revenue requirement effects
3 and also to quantify the net present value by discounting those future years' annual
4 effects. The computations are detailed on my Exhibit____(LK-26).

5
6 **Q. Why did you make this quantification in this proceeding rather than waiting for a**
7 **securitization or CTC proceeding?**

8
9 **A.** This quantification can and should be made in this proceeding because it directly affects
10 the final stranded cost true-up amount. There is no reason to wait until a subsequent
11 proceeding to make this quantification. If the Company makes a securitization or CTC
12 filing and the Commission uses a shorter or longer recovery period than the twelve years
13 that I used, then the amount can be trued-up during those proceedings.

14
15 **Q. Does this complete your testimony?**

16
17 **A.** Yes.

AFFIDAVIT

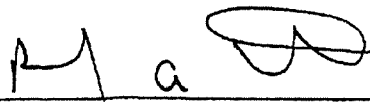
STATE OF GEORGIA)

COUNTY OF FULTON)

LANE KOLLEN, being duly sworn, deposes and states: that the attached are his sworn Testimony and Exhibits and that the statements contained are true and correct to the best of his knowledge, information and belief.


Lane Kollen

Sworn to and subscribed before me on this
2nd day of September 2005.



Notary Public

RANDY A. FUTRAL
NOTARY PUBLIC
Cobb County
State of Georgia
My Comm. Expires Aug. 26, 2008

SOAH DOCKET NO. 473-05-7455

PUC DOCKET NO. 31056

APPLICATION OF AEP TEXAS	)	PUBLIC UTILITY COMMISSION
CENTRAL COMPANY AND CPL)	
RETAIL ENERGY, LP TO DETERMINE	)	OF
TRUE-UP BALANCES PURSUANT TO)	
PURA §39.262 AND PETITION TO	)	TEXAS
DETERMINE AMOUNT OF EXCESS)	
MITIGATION CREDITS TO BE)	
REFUNDED AND RECOVERED)	

EXHIBITS
OF
LANE KOLLEN

ON BEHALF OF
THE ALLIANCE FOR VALLEY HEALTHCARE

J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA

EXHIBIT ____ (LK-1)

RÉSUMÉ OF LANE KOLLEN, VICE PRESIDENT

EDUCATION

University of Toledo, BBA
Accounting

University of Toledo, MBA

PROFESSIONAL CERTIFICATIONS

Certified Public Accountant (CPA)

Certified Management Accountant (CMA)

PROFESSIONAL AFFILIATIONS

American Institute of Certified Public Accountants

Georgia Society of Certified Public Accountants

Institute of Management Accountants

More than twenty-five years of utility industry experience in the financial, rate, tax, and planning areas. Specialization in revenue requirements analyses, taxes, evaluation of rate and financial impacts of traditional and nontraditional ratemaking, utility mergers/acquisition diversification. Expertise in proprietary and nonproprietary software systems used by utilities for budgeting, rate case support and strategic and financial planning.

J. KENNEDY AND ASSOCIATES, INC.

RESUME OF LANE KOLLEN, VICE PRESIDENT

EXPERIENCE

1986 to

Present:

J. Kennedy and Associates, Inc.: Vice President and Principal. Responsible for utility stranded cost analysis, revenue requirements analysis, cash flow projections and solvency, financial and cash effects of traditional and nontraditional ratemaking, and research, speaking and writing on the effects of tax law changes. Testimony before Connecticut, Florida, Georgia, Indiana, Louisiana, Kentucky, Maine, Minnesota, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, and West Virginia state regulatory commissions and the Federal Energy Regulatory Commission.

1983 to

1986:

Energy Management Associates: Lead Consultant.

Consulting in the areas of strategic and financial planning, traditional and nontraditional ratemaking, rate case support and testimony, diversification and generation expansion planning. Directed consulting and software development projects utilizing PROSCREEN II and ACUMEN proprietary software products. Utilized ACUMEN detailed corporate simulation system, PROSCREEN II strategic planning system and other custom developed software to support utility rate case filings including test year revenue requirements, rate base, operating income and pro-forma adjustments. Also utilized these software products for revenue simulation, budget preparation and cost-of-service analyses.

1976 to

1983:

The Toledo Edison Company: Planning Supervisor.

Responsible for financial planning activities including generation expansion planning, capital and expense budgeting, evaluation of tax law changes, rate case strategy and support and computerized financial modeling using proprietary and nonproprietary software products. Directed the modeling and evaluation of planning alternatives including:

Rate phase-ins.

Construction project cancellations and write-offs.

Construction project delays.

Capacity swaps.

Financing alternatives.

Competitive pricing for off-system sales.

Sale/leasebacks.

J. KENNEDY AND ASSOCIATES, INC.

RESUME OF LANE KOLLEN, VICE PRESIDENT

CLIENTS SERVED

Industrial Companies and Groups

Air Products and Chemicals, Inc.	Lehigh Valley Power Committee
Airco Industrial Gases	Maryland Industrial Group
Alcan Aluminum	Multiple Intervenors (New York)
Armco Advanced Materials Co.	National Southwire
Armco Steel	North Carolina Industrial
Bethlehem Steel	Energy Consumers
Connecticut Industrial Energy Consumers	Occidental Chemical Corporation
ELCON	Ohio Energy Group
Enron Gas Pipeline Company	Ohio Industrial Energy Consumers
Florida Industrial Power Users Group	Ohio Manufacturers Association
General Electric Company	Philadelphia Area Industrial Energy
GPU Industrial Intervenors	Users Group
Indiana Industrial Group	PSI Industrial Group
Industrial Consumers for	Smith Cogeneration
Fair Utility Rates - Indiana	Taconite Intervenors (Minnesota)
Industrial Energy Consumers - Ohio	West Penn Power Industrial Intervenors
Kentucky Industrial Utility Customers, Inc.	West Virginia Energy Users Group
Kimberly-Clark Company	Westvaco Corporation

Regulatory Commissions and Government Agencies

Georgia Public Service Commission Staff
Kentucky Attorney General's Office, Division of Consumer Protection
Louisiana Public Service Commission Staff
Maine Office of Public Advocate
New York State Energy Office
Office of Public Utility Counsel (Texas)

J. KENNEDY AND ASSOCIATES, INC.

RESUME OF LANE KOLLEN, VICE PRESIDENT

Utilities

Allegheny Power System
Atlantic City Electric Company
Carolina Power & Light Company
Cleveland Electric Illuminating Company
Delmarva Power & Light Company
Duquesne Light Company
General Public Utilities
Georgia Power Company
Middle South Services
Nevada Power Company
Niagara Mohawk Power Corporation

Otter Tail Power Company
Pacific Gas & Electric Company
Public Service Electric & Gas
Public Service of Oklahoma
Rochester Gas and Electric
Savannah Electric & Power Company
Seminole Electric Cooperative
Southern California Edison
Talquin Electric Cooperative
Tampa Electric
Texas Utilities
Toledo Edison Company

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
10/86	U-17282 Interim	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Cash revenue requirements financial solvency.
11/86	U-17282 Interim Rebuttal	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Cash revenue requirements financial solvency.
12/86	9613	KY	Attorney General Div. of Consumer Protection	Big Rivers Electric Corp.	Revenue requirements accounting adjustments financial workout plan.
1/87	U-17282 Interim	LA 19th Judicial District Ct.	Louisiana Public Service Commission Staff	Gulf States Utilities	Cash revenue requirements, financial solvency.
3/87	General Order 236	WV	West Virginia Energy Users' Group	Monongahela Power Co.	Tax Reform Act of 1986.
4/87	U-17282 Prudence	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Prudence of River Bend 1, economic analyses, cancellation studies.
4/87	M-100 Sub 113	NC	North Carolina Industrial Energy Consumers	Duke Power Co.	Tax Reform Act of 1986.
5/87	86-524-E	WV	West Virginia Energy Users' Group	Monongahela Power Co.	Revenue requirements. Tax Reform Act of 1986.
5/87	U-17282 Case In Chief	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements, River Bend 1 phase-in plan, financial solvency.
7/87	U-17282 Case In Chief Surebuttal	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements River Bend 1 phase-in plan, financial solvency.
7/87	U-17282 Prudence Surebuttal	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Prudence of River Bend 1, economic analyses, cancellation studies.

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
7/87	86-524 E-SC Rebuttal	WV	West Virginia Energy Users' Group	Monongahela Power Co.	Revenue requirements, Tax Reform Act of 1986.
8/87	9885	KY	Attorney General Div. of Consumer Protection	Big Rivers Electric Corp.	Financial workout plan.
8/87	E-015/GR- 87-223	MN	Taconite Intervenors	Minnesota Power & Light Co.	Revenue requirements, O&M expense, Tax Reform Act of 1986.
10/87	870220-EI	FL	Occidental Chemical Corp.	Florida Power Corp.	Revenue requirements, O&M expense, Tax Reform Act of 1986.
11/87	87-07-01	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	Tax Reform Act of 1986.
1/88	U-17282	LA 19th Judicial District CL	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements, River Bend 1 phase-in plan, rate of return.
2/88	9934	KY	Kentucky Industrial Utility Customers	Louisville Gas & Electric Co.	Economics of Trimble County completion.
2/88	10064	KY	Kentucky Industrial Utility Customers	Louisville Gas & Electric Co.	Revenue requirements, O&M expense, capital structure, excess deferred income taxes.
5/88	10217	KY	Alcan Aluminum National Southwire	Big Rivers Electric Corp.	Financial workout plan. Corp.
5/88	M-87017 -1C001	PA	GPU Industrial Intervenors	Metropolitan Edison Co.	Nonutility generator deferred cost recovery.
5/88	M-87017 -2C005	PA	GPU Industrial Intervenors	Pennsylvania Electric Co.	Nonutility generator deferred cost recovery.
8/88	U-17282	LA 19th Judicial District CL	Louisiana Public Service Commission Staff	Gulf States Utilities	Prudence of River Bend 1 economic analyses, cancellation studies, financial modeling.

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
7/88	M-87017- -1C001 Rebuttal	PA	GPU Industrial Intervenors	Metropolitan Edison Co.	Nonutility generator deferred cost recovery, SFAS No. 92
7/88	M-87017- -2C005 Rebuttal	PA	GPU Industrial Intervenors	Pennsylvania Electric Co.	Nonutility generator deferred cost recovery, SFAS No. 92
9/88	88-05-25	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	Excess deferred taxes, O&M expenses.
9/88	10064 Rehearing	KY	Kentucky Industrial Utility Customers	Louisville Gas & Electric Co.	Premature retirements, interest expense.
10/88	88-170- EL-AIR	OH	Ohio Industrial Energy Consumers	Cleveland Electric Illuminating Co.	Revenue requirements, phase-in, excess deferred taxes, O&M expenses, financial considerations, working capital.
10/88	88-171- EL-AIR	OH	Ohio Industrial Energy Consumers	Toledo Edison Co.	Revenue requirements, phase-in, excess deferred taxes, O&M expenses, financial considerations, working capital.
10/88	8800 355-EI	FL	Florida Industrial Power Users' Group	Florida Power & Light Co.	Tax Reform Act of 1986, tax expenses, O&M expenses, pension expense (SFAS No. 87).
10/88	3780-U	GA	Georgia Public Service Commission Staff	Atlanta Gas Light Co.	Pension expense (SFAS No. 87).
11/88	U-17282 Remand	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Rate base exclusion plan (SFAS No. 71)
12/88	U-17970	LA	Louisiana Public Service Commission Staff	AT&T Communications of South Central States	Pension expense (SFAS No. 87).
12/88	U-17948 Rebuttal	LA	Louisiana Public Service Commission Staff	South Central Bell	Compensated absences (SFAS No. 43), pension expense (SFAS No. 87), Part 32, income tax normalization.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
2/89	U-17282 Phase II	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements, phase-in of River Bend 1, recovery of canceled plant.
6/89	881602-EU 890326-EU	FL	Talquin Electric Cooperative	Talquin/City of Tallahassee	Economic analyses, incremental cost-of-service, average customer rates.
7/89	U-17970	LA	Louisiana Public Service Commission Staff	AT&T Communications of South Central States	Pension expense (SFAS No. 87), compensated absences (SFAS No. 43), Part 32.
8/89	8555	TX	Occidental Chemical Corp.	Houston Lighting & Power Co.	Cancellation cost recovery, tax expense, revenue requirements.
8/89	3840-U	GA	Georgia Public Service Commission Staff	Georgia Power Co.	Promotional practices, advertising, economic development.
9/89	U-17282 Phase II Detailed	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements, detailed investigation.
10/89	8880	TX	Enron Gas Pipeline	Texas-New Mexico Power Co.	Deferred accounting treatment, sale/leaseback.
10/89	8928	TX	Enron Gas Pipeline	Texas-New Mexico Power Co.	Revenue requirements, imputed capital structure, cash working capital.
10/89	R-891364	PA	Philadelphia Area Industrial Energy Users Group	Philadelphia Electric Co.	Revenue requirements.
11/89 12/89	R-891364 Supplemental (2 Filings)	PA	Philadelphia Area Industrial Energy Users Group	Philadelphia Electric Co.	Revenue requirements, sale/leaseback.
1/90	U-17282 Phase II Detailed Rebuttal	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements detailed investigation.

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
1/90	U-17282 Phase III	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Phase-in of River Bend 1, deregulated asset plan.
3/90	890319-EI	FL	Florida Industrial Power Users Group	Florida Power & Light Co.	O&M expenses, Tax Reform Act of 1986.
4/90	890319-EI Rebuttal	FL	Florida Industrial Power Users Group	Florida Power & Light Co.	O&M expenses, Tax Reform Act of 1986.
4/90	U-17282	LA 19 th Judicial District Ct.	Louisiana Public Service Commission Staff	Gulf States Utilities	Fuel clause, gain on sale of utility assets.
9/90	90-158	KY	Kentucky Industrial Utility Customers	Louisville Gas & Electric Co.	Revenue requirements, post-test year additions, forecasted test year.
12/90	U-17282 Phase IV	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements.
3/91	29327, et. al.	NY	Multiple Intervenor	Niagara Mohawk Power Corp.	Incentive regulation.
5/91	9945	TX	Office of Public Utility Counsel of Texas	El Paso Electric Co.	Financial modeling, economic analyses, prudence of Palo Verde 3.
9/91	P-910511 P-910512	PA	Allegheny Ludlum Corp., Armco Advanced Materials Co., The West Penn Power Industrial Users' Group	West Penn Power Co.	Recovery of CAAA costs, least cost financing.
9/91	91-231 -E-NC	WV	West Virginia Energy Users Group	Monongahela Power Co.	Recovery of CAAA costs, least cost financing.
11/91	U-17282	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Asset impairment, deregulated asset plan, revenue require- ments.

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
12/91	91-410-EL-AIR	OH	Air Products and Chemicals, Inc., Armco Steel Co., General Electric Co., Industrial Energy Consumers	Cincinnati Gas & Electric Co.	Revenue requirements, phase-in plan.
12/91	10200	TX	Office of Public Utility Counsel of Texas	Texas-New Mexico Power Co.	Financial integrity, strategic planning, declined business affiliations.
5/92	910890-EI	FL	Occidental Chemical Corp.	Florida Power Corp.	Revenue requirements, O&M expense, pension expense, OPEB expense, fossil dismantling, nuclear decommissioning.
8/92	R-00922314	PA	GPU Industrial Intervenor	Metropolitan Edison Co.	Incentive regulation, performance rewards, purchased power risk, OPEB expense.
8/92	92-043	KY	Kentucky Industrial Utility Consumers	Generic Proceeding	OPEB expense.
9/92	920324-EI	FL	Florida Industrial Power Users' Group	Tampa Electric Co.	OPEB expense.
9/92	39348	IN	Indiana Industrial Group	Generic Proceeding	OPEB expense.
9/92	910840-PU	FL	Florida Industrial Power Users' Group	Generic Proceeding	OPEB expense.
9/92	39314	IN	Industrial Consumers for Fair Utility Rates	Indiana Michigan Power Co.	OPEB expense.
11/92	U-19904	LA	Louisiana Public Service Commission Staff	Gulf States Utilities/Energy Corp.	Merger.
11/92	8649	MD	Westvaco Corp., Eastalco Aluminum Co.	Potomac Edison Co.	OPEB expense.
11/92	92-1715-AU-COI	OH	Ohio Manufacturers Association	Generic Proceeding	OPEB expense.

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12/92	R-00922378	PA	Armco Advanced Materials Co., The WPP Industrial Intervenor	West Penn Power Co.	Incentive regulation, performance rewards, purchased power risk, OPEB expense.
12/92	U-19949	LA	Louisiana Public Service Commission Staff	South Central Bell	Affiliate transactions, cost allocations, merger.
12/92	R-00922479	PA	Philadelphia Area Industrial Energy Users' Group	Philadelphia Electric Co.	OPEB expense.
1/93	8487	MD	Maryland Industrial Group	Baltimore Gas & Electric Co., Bethlehem Steel Corp.	OPEB expense, deferred fuel, CWP in rate base
1/93	39498	IN	PSI Industrial Group	PSI Energy, Inc.	Refunds due to over-collection of taxes on Marble Hill cancellation.
3/93	92-11-11	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	OPEB expense.
3/93	U-19904 (Surebuttal)	LA	Louisiana Public Service Commission Staff	Gulf States Utilities/Entergy Corp.	Merger. Corp.
3/93	93-01 EL-EFC	OH	Ohio Industrial Energy Consumers	Ohio Power Co.	Affiliate transactions, fuel.
3/93	EC92-21000 ER92-806-000	FERC	Louisiana Public Service Commission Staff	Gulf States Utilities/Entergy Corp.	Merger.
4/93	92-1464- EL-AIR	OH	Air Products Armco Steel Industrial Energy Consumers	Cincinnati Gas & Electric Co.	Revenue requirements, phase-in plan.
4/93	EC92-21000 ER92-806-000 (Rebuttal)	FERC	Louisiana Public Service Commission Staff	Gulf States Utilities/Entergy Corp.	Merger.

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Date	Case	Jurisdct.	Party	Utility	Subject
9/93	93-113	KY	Kentucky Industrial Utility Customers	Kentucky Utilities	Fuel clause and coal contract refund.
9/93	92-490, 92-490A, 90-360-C	KY	Kentucky Industrial Utility Customers and Kentucky Attorney General	Big Rivers Electric Corp.	Disallowances and restitution for excessive fuel costs, illegal and improper payments, recovery of mine closure costs.
10/93	U-17735	LA	Louisiana Public Service Commission Staff	Cajun Electric Power Cooperative	Revenue requirements, debt restructuring agreement, River Bend cost recovery.
1/94	U-20647	LA	Louisiana Public Service Commission Staff	Gulf States Utilities Co.	Audit and investigation into fuel clause costs.
4/94	U-20647 (Surrebuttal)	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Nuclear and fossil unit performance, fuel costs, fuel clause principles and guidelines.
5/94	U-20178	LA	Louisiana Public Service Commission Staff	Louisiana Power & Light Co.	Planning and quantification issues of least cost integrated resource plan.
9/94	U-19904 Initial Post-Merger Earnings Review	LA	Louisiana Public Service Commission Staff	Gulf States Utilities Co.	River Bend phase-in plan, deregulated asset plan, capital structure, other revenue requirement issues.
9/94	U-17735	LA	Louisiana Public Service Commission Staff	Cajun Electric Power Cooperative	G&T cooperative ratemaking policies, exclusion of River Bend, other revenue requirement issues.
10/94	3905-U	GA	Georgia Public Service Commission Staff	Southern Bell Telephone Co.	Incentive rate plan, earnings review.
10/94	5258-U	GA	Georgia Public Service Commission Staff	Southern Bell Telephone Co.	Alternative regulation, cost allocation.

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Date	Case	Jurisdicl.	Party	Utility	Subject
11/94	U-19904 Initial Post-Merger Earnings Review (Rebuttal)	LA	Louisiana Public Service Commission Staff	Gulf States Utilities Co.	River Bend phase-in plan, deregulated asset plan, capital structure, other revenue requirement issues.
11/94	U-17735 (Rebuttal)	LA	Louisiana Public Service Commission Staff	Cajun Electric Power Cooperative	G&T cooperative ratemaking policy, exclusion of River Bend, other revenue requirement issues.
4/95	R-00943271	PA	PP&L Industrial Customer Alliance	Pennsylvania Power & Light Co.	Revenue requirements. Fossil dismantling, nuclear decommissioning.
6/95	3905-U	GA	Georgia Public Service Commission	Southern Bell Telephona Co.	Incentive regulation, affiliate transactions, revenue requirements, rate refund.
6/95	U-19904 (Direct)	LA	Louisiana Public Service Commission	Gulf States Utilities Co.	Gas, coal, nuclear fuel costs, contract prudence, base/fuel realignment.
10/95	95-02614	TN	Tennessee Office of the Attorney General Consumer Advocate	BellSouth Telecommunications, Inc.	Affiliate transactions.
10/95	U-21485 (Direct)	LA	Louisiana Public Service Commission	Gulf States Utilities Co.	Nuclear O&M, River Bend phase-in plan, base/fuel realignment, NOL and AltMin asset deferred taxes, other revenue requirement issues.
11/95	U-19904 (Surrebuttal)	LA	Louisiana Public Service Commission	Gulf States Utilities Co. Division	Gas, coal, nuclear fuel costs, contract prudence, base/fuel realignment.
11/95	U-21485 (Supplemental Direct)	LA	Louisiana Public Service Commission	Gulf States Utilities Co.	Nuclear O&M, River Bend phase-in plan, base/fuel realignment, NOL and AltMin asset deferred taxes, other revenue requirement issues.
12/95	U-21485 (Surrebuttal)				

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Date	Case	Jurisdct.	Party	Utility	Subject
1/96	95-299-EL-AJR 95-300-EL-AJR	OH	Industrial Energy Consumers	The Toledo Edison Co. The Cleveland Electric Illuminating Co.	Competition, asset writeoffs and revaluation, O&M expense, other revenue requirement issues.
2/96	PUC No. 14967	TX	Office of Public Utility Counsel	Central Power & Light	Nuclear decommissioning.
5/96	95-485-LCS	NM	City of Las Cruces	El Paso Electric Co.	Stranded cost recovery, municipalization.
7/96	8725	MD	The Maryland Industrial Group and Redland Genstar, Inc.	Baltimore Gas & Electric Co., Potomac Electric Power Co. and Constellation Energy Corp.	Merger savings, tracking mechanism, earnings sharing plan, revenue requirement issues.
9/96 11/96	U-22092 U-22092 (Surrebuttal)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	River Bend phase-in plan, basefuel realignment, NOL and ARMin asset deferred taxes, other revenue requirement issues, allocation of regulated/nonregulated costs.
10/96	96-327	KY	Kentucky Industrial Utility Customers, Inc.	Big Rivers Electric Corp.	Environmental surcharge recoverable costs.
2/97	R-00973877	PA	Philadelphia Area Industrial Energy Users Group	PECO Energy Co.	Stranded cost recovery, regulatory assets and liabilities, intangible transition charge, revenue requirements.
3/97	96-489	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Power Co.	Environmental surcharge recoverable costs, system agreements, allowance inventory, jurisdictional allocation.
6/97	TO-97-397	MO	MCI Telecommunications Corp., Inc., MCImetro Access Transmission Services, Inc.	Southwestern Bell Telephone Co.	Price cap regulation, revenue requirements, rate of return.

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Date	Case	Jurisdic.	Party	Utility	Subject
6/97	R-00973953	PA	Philadelphia Area Industrial Energy Users Group	PECO Energy Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning.
7/97	R-00973954	PA	PP&L Industrial Customer Alliance	Pennsylvania Power & Light Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning.
7/97	U-22092	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Depreciation rates and methodologies, River Bend phase-in plan.
8/97	97-300	KY	Kentucky Industrial Utility Customers, Inc.	Louisville Gas & Electric Co. and Kentucky Utilities Co.	Merger policy, cost savings, surcredit sharing mechanism, revenue requirements, rate of return.
8/97	R-00973954 (Surebuttal)	PA	PP&L Industrial Customer Alliance	Pennsylvania Power & Light Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning.
10/97	97-204	KY	Alcan Aluminum Corp. Southwire Co.	Big Rivers Electric Corp.	Restructuring, revenue requirements, reasonableness
10/97	R-974008	PA	Metropolitan Edison Industrial Users Group	Metropolitan Edison Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning, revenue requirements.
10/97	R-974009	PA	Penelec Industrial Customer Alliance	Pennsylvania Electric Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning, revenue requirements.
11/97	97-204 (Rebuttal)	KY	Alcan Aluminum Corp. Southwire Co.	Big Rivers Electric Corp.	Restructuring, revenue requirements, reasonableness of rates, cost allocation.

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Date	Case	Jurisdct.	Party	Utility	Subject
11/97	U-22491	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, other revenue requirement issues.
11/97	R-00973953 (Surrebuttal)	PA	Philadelphia Area Industrial Energy Users Group	PECO Energy Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning.
11/97	R-973981	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, fossil decommissioning, revenue requirements, securitization.
11/97	R-974104	PA	Duquesne Industrial Intervenor	Duquesne Light Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning, revenue requirements, securitization.
12/97	R-973981 (Surrebuttal)	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, fossil decommissioning, revenue requirements.
12/97	R-974104 (Surrebuttal)	PA	Duquesne Industrial Intervenor	Duquesne Light Co.	Restructuring, deregulation, stranded costs, regulatory assets, liabilities, nuclear and fossil decommissioning, revenue requirements, securitization.
1/98	U-22491 (Surrebuttal)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, other revenue requirement issues.
2/98	8774	MD	Westvaco	Polomac Edison Co.	Merger of Duquesne, AE, customer safeguards, savings sharing.

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Date	Case	Jurisdct.	Party	Utility	Subject
3/98	U-22092 (Allocated Stranded Cost Issues)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Restructuring, stranded costs, regulatory assets, securitization, regulatory mitigation.
3/98	8390-U	GA	Georgia Natural Gas Group, Georgia Textile Manufacturers Assoc.	Atlanta Gas Light Co.	Restructuring, unbundling, stranded costs, incentive regulation, revenue requirements.
3/98	U-22092 (Allocated Stranded Cost Issues) (Surrebuttal)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Restructuring, stranded costs, regulatory assets, securitization, regulatory mitigation.
10/98	97-596	ME	Maine Office of the Public Advocate	Bangor Hydro- Electric Co.	Restructuring, unbundling, stranded costs, T&D revenue requirements.
10/98	9355-U	GA	Georgia Public Service Commission Adversary Staff	Georgia Power Co.	Affiliate transactions.
10/98	U-17736	LA	Louisiana Public Service Commission Staff	Cajun Electric Power Cooperative	G&T cooperative ratemaking policy, other revenue requirement issues.
11/98	U-23327	LA	Louisiana Public Service Commission Staff	SWEPCO, CSW and AEP	Merger policy, savings sharing mechanism, affiliate transaction conditions.
12/98	U-23358 (Direct)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, tax issues, and other revenue requirement issues.
12/98	98-577	ME	Maine Office of Public Advocate	Maine Public Service Co.	Restructuring, unbundling, stranded cost, T&D revenue requirements.
1/99	98-10-07	CT	Connecticut Industrial Energy Consumers	United Illuminating Co.	Stranded costs, investment tax credits, accumulated deferred income taxes, excess deferred income taxes.

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Date	Case	Jurisdct.	Party	Utility	Subject
3/99	U-23358 (Surrebuttal)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, tax issues, and other revenue requirement issues.
3/99	98-474	KY	Kentucky Industrial Utility Customers	Louisville Gas and Electric Co.	Revenue requirements, alternative forms of regulation.
3/99	98-426	KY	Kentucky Industrial Utility Customers	Kentucky Utilities Co.	Revenue requirements, alternative forms of regulation.
3/99	99-082	KY	Kentucky Industrial Utility Customers	Louisville Gas and Electric Co.	Revenue requirements.
3/99	99-083	KY	Kentucky Industrial Utility Customers	Kentucky Utilities Co.	Revenue requirements.
4/99	U-23358 (Supplemental Surrebuttal)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, tax issues, and other revenue requirement issues.
4/99	99-03-04	CT	Connecticut Industrial Energy Consumers mechanisms.	United Illuminating Co.	Regulatory assets and liabilities, stranded costs, recovery
4/99	99-02-05	CT	Connecticut Industrial Utility Customers mechanisms.	Connecticut Light and Power Co.	Regulatory assets and liabilities stranded costs, recovery
5/99	98-426 99-082 (Additional Direct)	KY	Kentucky Industrial Utility Customers	Louisville Gas and Electric Co.	Revenue requirements.
5/99	98-474 99-083 (Additional Direct)	KY	Kentucky Industrial Utility Customers	Kentucky Utilities Co.	Revenue requirements.
5/99	98-426 98-474 (Response to Amended Applications)	KY	Kentucky Industrial Utility Customers Kentucky Utilities Co.	Louisville Gas and Electric Co. and	Alternative regulation.

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Date	Case	Jurisdct.	Party	Utility	Subject
6/99	97-596	ME	Maine Office of Public Advocate	Bangor Hydro-Electric Co.	Request for accounting order regarding electric industry restructuring costs.
6/99	U-23358	LA	Louisiana Public Public Service Comm. Staff	Entergy Gulf States, Inc.	Affiliate transactions, cost allocations.
7/99	99-03-35	CT	Connecticut Industrial Energy Consumers	United Illuminating Co.	Stranded costs, regulatory assets, tax effects of asset divestiture.
7/99	U-23327	LA	Louisiana Public Service Commission Staff	Southwestern Electric Power Co., Central and South West Corp, and American Electric Power Co.	Merger Settlement Stipulation.
7/99	97-596 (Surrebuttal)	ME	Maine Office of Public Advocate	Bangor Hydro-Electric Co.	Restructuring, unbundling, stranded cost, T&D revenue requirements.
7/99	98-0452-E-GI	WVa	West Virginia Energy Users Group	Monongahela Power, Potomac Edison, Appalachian Power, Wheeling Power	Regulatory assets and liabilities.
8/99	98-577 (Surrebuttal)	ME	Maine Office of Public Advocate	Maine Public Service Co.	Restructuring, unbundling, stranded costs, T&D revenue requirements.
8/99	98-426 99-082 (Rebuttal)	KY	Kentucky Industrial Utility Customers	Kentucky Utilities Co.	Revenue requirements.
8/99	98-474 98-083 (Rebuttal)	KY	Kentucky Industrial Utility Customers	Louisville Gas and Electric Co. and Kentucky Utilities Co.	Alternative forms of regulation.
8/99	98-0452-E-GI (Rebuttal)	WVa	West Virginia Energy Users Group	Monongahela Power, Potomac Edison, Appalachian Power, Wheeling Power	Regulatory assets and liabilities.

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Date	Case	Jurisdiction	Party	Utility	Subject
10/99	U-24182 (Direct)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, affiliate transactions, tax issues, and other revenue requirement issues.
11/99	21527	TX	Dallas-FtWorth Hospital Council and Coalition of Independent Colleges and Universities	TXU Electric	Restructuring, stranded costs, taxes, securitization.
11/99	U-23358 Surrebuttal Affiliate Transactions Review	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Service company affiliate transaction costs.
04/00	99-1212-EL-ETPOH 99-1213-EL-ATA 99-1214-EL-AAM		Greater Cleveland Growth Association	First Energy (Cleveland Electric Illuminating, Toledo Edison)	Historical review, stranded costs, regulatory assets, liabilities.
01/00	U-24182 (Surrebuttal)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, affiliate transactions, tax issues, and other revenue requirement issues.
05/00	2000-107	KY	Kentucky Industrial Utility Customers	Kentucky Power Co.	ECR surcharge roll-in to base rates.
05/00	U-24182 (Supplemental Direct)	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Affiliate expense proforma adjustments.
05/00	A-110550F0147 PA		Philadelphia Area Industrial Energy Users Group	PECO Energy	Merger between PECO and Unicom.
07/00	22344	TX	The Dallas-Fort Worth Hospital Council and The Coalition of Independent Colleges and Universities	Statewide Generic Proceeding	Escalation of O&M expenses for unbundled T&D revenue requirements in projected test year.
05/00	99-1658- EL-ETP	OH	AK Steel Corp.	Cincinnati Gas & Electric Co.	Regulatory transition costs, including regulatory assets and liabilities, SFAS 109, ADIT, EDIT, ITC.

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Date	Case	Jurisdct.	Party	Utility	Subject
07/00	U-21453	LA	Louisiana Public Service Commission	SWEPCO	Stranded costs, regulatory assets and liabilities.
08/00	U-24064	LA	Louisiana Public Service Commission Staff	CLECO	Affiliate transaction pricing ratemaking principles, subsidization of nonregulated affiliates, ratemaking adjustments.
10/00	PUC 22350 SOAH 473-00-1016	TX	The Dallas-Ft. Worth Hospital Council and The Coalition of Independent Colleges And Universities	TXU Electric Co.	Restructuring, T&D revenue requirements, mitigation, regulatory assets and liabilities.
10/00	R-00974104 (Affidavit)	PA	Duquesne Industrial Intervenor	Duquesne Light Co.	Final accounting for stranded costs, including treatment of auction proceeds, taxes, capital costs, switchback costs, and excess pension funding.
11/00	P-00001837 R-00974008 P-00001838 R-00974009		Metropolitan Edison Industrial Users Group Penelec Industrial Customer Alliance	Metropolitan Edison Co. Pennsylvania Electric Co.	Final accounting for stranded costs, including treatment of auction proceeds, taxes, regulatory assets and liabilities, transaction costs.
12/00	U-21453, LA U-20925, U-22092 (Subdocket C) (Surrebuttal)		Louisiana Public Service Commission Staff	SWEPCO	Stranded costs, regulatory assets.
01/01	U-24993 (Direct)		Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Allocation of regulated and nonregulated costs, tax issues, and other revenue requirement issues.
01/01	U-21453, U-20925 and U-22092 (Subdocket B) (Surrebuttal)		Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.,	Industry restructuring, business separation plan, organization structure, hold harmless conditions, financing.
01/01	Case No. 2000-388	KY	Kentucky Industrial Utility Customers, Inc.	Louisville Gas & Electric Co.	Recovery of environmental costs, surcharge mechanism.
01/01	Case No. 2000-439	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Co.	Recovery of environmental costs, surcharge mechanism.

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Date	Case	Jurisdiction	Party	Utility	Subject
02/01	A-110300F0095 PA A-110400F0040		Met-Ed Industrial Users Group Penelec Industrial Customer Alliance	PU, Inc. FirstEnergy	Merger, savings, reliability.
03/01	P-00001880 PA P-00001881		Met-Ed Industrial Users Group Penelec Industrial Customer Alliance	Metropolitan Edison Co. and Pennsylvania Electric Co.	Recovery of costs due to provider of last resort obligation.
04/01	U-21453, LA U-20925, U-22092 (Subdocket B) Settlement Term Sheet		Louisiana Public Public Service Comm. Staff	Entergy Gulf States, Inc.	Business separation plan: settlement agreement on overall plan structure.
04/01	U-21453, LA U-20925, U-22092 (Subdocket B) Contested Issues		Louisiana Public Public Service Comm. Staff	Entergy Gulf States, Inc.	Business separation plan: agreements, hold harmless conditions, separations methodology.
05/01	U-21453, LA U-20925, U-22092 (Subdocket B) Contested Issues Transmission and Distribution (Rebuttal)		Louisiana Public Public Service Comm. Staff	Entergy Gulf States, Inc.	Business separation plan: agreements, hold harmless conditions, Separations methodology.
07/01	U-21453, LA U-20925, U-22092 (Subdocket B) Transmission and Distribution Term Sheet		Louisiana Public Public Service Comm. Staff	Entergy Gulf States, Inc.	Business separation plan: settlement agreement on T&D issues, agreements necessary to implement T&D separations, hold harmless conditions, separations methodology.
10/01	14000-U GA		Georgia Public Service Commission Adversary Staff	Georgia Power Co.	Review requirements, Rate Plan, fuel clause recovery.
11/01 (Direct)	14311-U GA		Georgia Public Service Commission Adversary Staff	Atlanta Gas Light Co.	Revenue requirements, revenue forecast, O&M expense, depreciation, plant additions, cash working capital.

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Date	Case	Jurisdct.	Party	Utility	Subject
11/01 (Direct)	U-25687	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Revenue requirements, capital structure, allocation of regulated and nonregulated costs, River Bend uprate.
02/02	25230	TX	Dallas Ft-Worth Hospital Council & the Coalition of Independent Colleges & Universities	TXU Electric	Stipulation. Regulatory assets, securitization financing.
02/02 (Surrebuttal)	U-25687	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Revenue requirements, corporate franchise tax, conversion to LLC, River Bend uprate.
03/02 (Rebuttal)	14311-U	GA	Georgia Public Service Commission Adversary Staff	Atlanta Gas Light Co.	Revenue requirements, earnings sharing plan, service quality standards.
03/02	001148-EI	FL	South Florida Hospital and Healthcare Assoc.	Florida Power & Light Co.	Revenue requirements. Nuclear life extension, storm damage accruals and reserve, capital structure, O&M expense.
04/02 (Supplemental Surrebuttal)	U-25687	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Revenue requirements, corporate franchise tax, conversion to LLC, River Bend uprate.
04/02	U-21453, U-20925 and U-22092 (Subdocket C)		Louisiana Public Service Commission Staff	SWEPCO	Business separation plan, T&D Term Sheet, separations methodologies, hold harmless conditions.
08/02	EL01- 88-000	FERC	Louisiana Public Service Commission Staff	Entergy Services, Inc. and The Entergy Operating Companies	System Agreement, production cost equalization, tariffs.
08/02	U-25888	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc. and Entergy Louisiana, Inc.	System Agreement, production cost disparities, prudence.
09/02	2002-00224 2002-00225	KY	Kentucky Industrial Utilities Customers, Inc.	Kentucky Utilities Co. Louisville Gas & Electric Co.	Line losses and fuel clause recovery associated with off-system sales.
11/02	2002-00146 2002-00147	KY	Kentucky Industrial Utilities Customers, Inc.	Kentucky Utilities Co. Louisville Gas & Electric Co.	Environmental compliance costs and surcharge recovery.
01/03	2002-00169	KY	Kentucky Industrial Utilities Customers, Inc.	Kentucky Power Co.	Environmental compliance costs and surcharge recovery.

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Date	Case	Jurisdct.	Party	Utility	Subject
04/03	2002-00429 2002-00430	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Co. Louisville Gas & Electric Co.	Extension of merger surcredit, flaws in Companies' studies.
04/03	U-26527	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Revenue requirements, corporate franchise tax, conversion to LLC, Capital structure, post test year Adjustments.
06/03	EL01- 88-000 Rebuttal	FERC	Louisiana Public Service Commission Staff	Entergy Services, Inc. and the Entergy Operating Companies	System Agreement, production cost equalization, tariffs.
06/03	2003-00068	KU	Kentucky Industrial Utility Customers	Kentucky Utilities Co.	Environmental cost recovery, correction of base rate error.
11/03	ER03-753-000	FERC	Louisiana Public Service Commission Staff	Entergy Services, Inc. and the Entergy Operating Companies	Unit power purchases and sale cost-based tariff pursuant to System Agreement.
11/03	ER03-583-000, FERC ER03-583-001, and ER03-583-002 ER03-681-000, ER03-681-001 ER03-682-000, ER03-682-001, and ER03-682-002 ER03-744-000, ER03-744-001 (Consolidated)		Louisiana Public Service Commission	Entergy Services, Inc., the Entergy Operating Companies, EWO Market- ing, L.P. and Entergy Power, Inc.	Unit power purchase and sale agreements, contractual provisions, projected costs, levelized rates, and formula rates.
12/03	U-26527 Surebuttal	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Revenue requirements, corporate franchise tax, conversion to LLC, Capital structure, post test year adjustments.
12/03	2003-0334 2003-0335	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Co. Louisville Gas & Electric Co.	Earnings Sharing Mechanism.
12/03	U-27136	LA	Louisiana Public Service Commission	Entergy Louisiana, Inc.	Purchased power contracts between affiliates, terms and conditions.

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Date	Case	Jurisdct.	Party	Utility	Subject
03/04	U-26527 Supplemental Surrebuttal	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Revenue requirements, corporate franchise tax, conversion to LLC, capital structure, post last year adjustments.
03/04	2003-00433	KY	Kentucky Industrial Utility Customers, Inc.	Louisville Gas & Electric Co.	Revenue requirements, depreciation rates, O&M expense, deferrals and amortization, earnings sharing mechanism, merger surcredit, VDT surcredit.
03/04	2003-00434	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Co.	Revenue requirements, depreciation rates, O&M expense, deferrals and amortization, earnings sharing mechanism, merger surcredit, VDT surcredit.
03/04	SOAH Docket 473-04-2459, PUC Docket 29206	TX	Cities Served by Texas- New Mexico Power Co.	Texas-New Mexico Power Co.	Stranded costs true-up, including including valuation issues, ITC, ADIT, excess earnings.
05/04	04-169-EL-	OH	Ohio Energy Group, Inc.	Columbus Southern Power Co. & Ohio Power Co.	Rate stabilization plan, deferrals, T&D rate increases, earnings.
06/04	SOAH Docket 473-04-4555 PUC Docket 29526	TX	Houston Council for Health and Education	CenterPoint Energy Houston Electric	Stranded costs true-up, including valuation issues, ITC, EDIT, excess mitigation credits, capacity auction
08/04	SOAH Docket 473-04-4556 PUC Docket 29526 (Suppl Direct)	TX	Houston Council for Health and Education	true-up revenues, interest CenterPoint Energy Houston Electric	Interest on stranded cost pursuant to Texas Supreme Court remand.
09/04	Docket No. U-23327 Subdocket B	LA	Louisiana Public Service Commission	SWEPSCO	Fuel and purchased power expenses recoverable through fuel adjustment clause, trading activities, compliance with terms of various LPSC Orders.
10/04	Docket No. U-23327 Subdocket A	LA	Louisiana Public Service Commission	SWEPSCO	Revenue requirements.

Expert Testimony Appearances
of
Lane Kollen
As of August 2005

Date	Case	Jurisdct.	Party	Utility	Subject
12/04	Case No. 2004-00321 Case No. 2004-00372	KY	Gallatin Steel Co.	East Kentucky Power Cooperative, Inc., Big Sandy Recc, etal.	Environmental cost recovery, qualified costs, TIER requirements, cost allocation.
02/05	18638-U	GA	Georgia Public Service Commission	Atlanta Gas Light Co.	Revenue requirements.
02/05	18638-U Panel with Tony Wackerly	GA	Georgia Public Service Commission	Atlanta Gas Light Co.	Comprehensive rate plan, pipeline replacement program surcharge, performance based rate plan.
02/05	18638-U Panel with Michelle Thebert	GA	Georgia Public Service Commission	Atlanta Gas Light Co.	Energy conservation, economic development, and tariff issues.
03/05	Case No. 2004-00426 Case No. 2004-00421	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Co. Louisville Gas & Electric	Environmental cost recovery, Jobs Creation Act of 2004 and § 199 deduction, excess common equity ratio, deferral and amortization of nonrecurring O&M expense.
06/05	2005-00068	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Power Co.	Environmental cost recovery, Jobs Creation Act of 2004 and § 199 deduction, margins on allowances used for AEP System sales.
06/05	050045-EI	FL	South Florida Hospital and Healthcare Assoc.	Florida Power & Light Co.	Storm damage expense and reserve, RTO costs, O&M expense projections, return on equity performance incentive, capital structure, selective second phase post-test year rate increase.

J. KENNEDY AND ASSOCIATES, INC.

EXHIBIT ____ (LK-2)

**AEP TEXAS CENTRAL COMPANY
SFAS 109 REGULATORY ASSETS
GENERATION ASSETS
December 31, 2001**

SFAS 109 REGULATORY ASSET — FEDERAL		Generation	Nuclear	TOTAL
Flow-Thru Temporary Differences (AOFUDC / Other)	Exhibit JBB-3	12,935,751	392,485,951	405,421,702
Federal Income Tax Rate		35%	35%	35%
SFAS 109 Regulatory Asset - Federal		<u>4,527,513</u>	<u>137,370,083</u>	<u>141,897,596</u>
SFAS 109 Regulatory Asset - Federal Gross-Up		2,437,892	73,968,506	76,406,398
Total SFAS 109 Regulatory Asset — Federal		<u><u>6,965,405</u></u>	<u><u>211,338,589</u></u>	<u><u>218,303,994</u></u>
SFAS 109 REGULATORY ASSET — STATE		Generation	Nuclear	TOTAL
Total SFAS 109 Regulatory Asset — State	Exhibit JBB-4	<u><u>3,806,369</u></u>	<u><u>27,360,268</u></u>	<u><u>31,166,637</u></u>
SFAS 109 REGULATORY ASSET — SUMMARY				TOTAL
Total SFAS 109 Regulatory Asset — Summary				<u><u>249,470,631</u></u>

EXHIBIT ____ (LK-3)

AEP Texas Central Company
Regulatory Assets Included In Stranded Cost Not Previously Securitized

Asset Name	BALANCE AS OF DECEMBER 31, 1998			Balance as of 12/31/2001 Not Previously Securitized
	Texas Retail Generation Regulatory Assets	Amount Securitized	Outstanding Regulatory Asset	
SFAS 109 Regulatory Assets:	\$ 448,600,487.00	\$ 139,182,000.00	\$ 309,418,487.00	\$ 249,470,631.00
Other Tax Related	-	-	-	-
Deferred Accounting ADIT Deficiency	4,824,470	4,824,470	-	-
	<u>453,424,957</u>	<u>144,006,470</u>	<u>309,418,487</u>	<u>249,470,631</u>
Mirror CWP (Retail and FERC)	256,004,868	253,656,969	2,347,899	-
Loss on Reacquired Debt	66,963,634	64,350,789	2,612,845	-
Deferred Electric Business Study	2,259,469	-	2,259,469	-
DOE D&D	4,470,354	-	4,470,354	3,169,647
DSM	4,676,507	4,676,507	-	-
Deferred Accounting	482,447,027	482,447,027	-	-
Total	<u>\$ 1,270,246,816.00</u>	<u>\$ 949,137,762.00</u>	<u>\$ 321,109,054.00</u>	<u>\$ 252,640,278.00</u>

EXHIBIT ____ (LK-4)

CENTRAL POWER AND LIGHT COMPANY
PUBLIC UTILITY COMMISSION OF TEXAS
REGULATORY ASSET SECURITIZATION FILING
SFAS 109 INFORMATION

Line No.		
1	12/31/1998 Balance Per 10-K	\$ 379,399,544
2		
3	Less:	
4	SFAS 109 amounts not considered in	
5	the asset by asset presentation	
6	on Schedules A-F	
7	ITC Gross-up	\$ (80,501,764)
8	Excess ADIT - Gross-up	(13,797,606)
9		<u>\$ (94,299,370)</u>
10	Remaining SFAS 109 balance available	
11	to securitize - Total Company	<u>\$ 473,698,914</u>
12		
13	Texas Retail Generation Portion	<u>\$ 448,600,487</u>

**CENTRAL POWER AND LIGHT COMPANY
PUBLIC UTILITY COMMISSION OF TEXAS
REGULATORY ASSET SECURITIZATION FILING
SFAS 109 REGULATORY ASSETS AND RELATED ASSETS**

	(A)	(B)	(C)	(D)	(E)
Line No.	Name of Asset Giving Rise to the SFAS 109 Asset	Total Company 12/31/98 Asset Balance	Total Company Associated SFAS 109 Reg. Asset	Remaining Life of Asset at 12/31/98	Retail Texas Gen. Regulatory Assets To Securitize at 12/31/1998
1	Plant-In Service - Perm / FT				
2	Basis differences	\$ 59,796,647	\$ 32,198,194	29 years	\$ 30,367,100
3					
4	Plant-In Service - AFUDC Equity	422,341,236	227,414,512	29 years	214,481,570
5					
6	Accounting Order Deferral - MCWIP	256,702,338	138,224,336	29 years	137,848,780
7					
8					
9	Accounting Order Deferral - Deferred				
10	Accounting ADIT Deficiency Gross-up	4,824,470	2,597,792	29 years	2,597,792
11					
12	Plant-In-Service - State Flow Thru	3,147,634,000	73,264,080	29 years	63,306,245
13			<u>\$ 473,698,814</u>		<u>\$ 448,800,487</u>

SUPPLEMENTAL SCHEDULE 1

EXHIBIT ____ (LK-5)

alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2002-22-05*

Repetitive Inspections

(a) Do general visual and nondestructive test (NDT) inspections of each carriage spindle (two on each flap) of the left and right outboard mid-flaps to find cracks, fractures, or corrosion at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. Repeat the inspections at least every 180 days until paragraph (b) or (c) of this AD is done, as applicable.

(1) Before the accumulation of 12,000 total flight cycles or 8 years in-service on new or overhauled carriage spindles, whichever is first.

(2) Within 90 days after November 15, 2002 (the effective date of AD 2002-22-05, amendment 39-12929).

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(b) If any crack, fracture, or corrosion is found during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable actions for that spindle as specified in paragraph (b)(1) or (b)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. Then repeat the inspections required by paragraph (a) of this AD every 12,000 flight cycles or 8 years, whichever is first, on the overhauled or replaced spindle only.

(1) If any corrosion is found in the carriage spindle, overhaul the spindle.

(2) If any crack or fracture is found in the carriage spindle, replace with a new or overhauled carriage spindle.

Note 3: Although Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002,

recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

New Requirements of This AD

Overhaul or Replacement

(c) Overhaul or replace, as applicable, all four carriage spindles (two on each flap) of the left and right outboard mid-flaps at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1218, Revision 3, dated July 25, 2002. Then repeat the applicable overhaul or replacement every 12,000 flight cycles or 8 years, whichever is first. Accomplishment of this paragraph ends the repetitive inspections required by paragraphs (a) and (b) of this AD.

(1) For Model 737-100, -200, and -200C series airplanes, overhaul or replace at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle, or within 8 years since overhaul of the spindle or installation of a new spindle, whichever is first.

(ii) Within 1 year after the effective date of this AD.

(2) For Model 737-300, -400, and -500 series airplanes, overhaul or replace at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle, or within 8 years since overhaul of the spindle or installation of a new spindle, whichever is first.

(ii) Within 2 years after the effective date of this AD.

(d) During accomplishment of any overhaul required by paragraph (c) of this AD, use the procedures specified in paragraphs (d)(1) and (d)(2) of this AD during application of the nickel plating of the carriage spindle in addition to those specified in Boeing 737 Standard Overhaul Practices Manual, Chapter 20-42-09.

(1) Begin the hydrogen embrittlement relief bake within 10 hours after application of the plating, or less than 24 hours after the current was first applied to the part, whichever is first.

(2) The maximum thickness of the nickel plating that is deposited in any one plating/baking cycle must not exceed 0.020 inch.

(e) Overhauling or replacing the carriage spindles before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002, is considered acceptable for compliance with the overhaul or replacement specified in paragraph (c) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 26, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-4990 Filed 3-3-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-104385-01]

RIN 1545-AY75

Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Generation Assets Cease to be Public Utility Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance on the normalization requirements applicable to electric utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. The proposed regulations permit a utility whose electricity generation assets cease to be public utility property to return to their ratepayers the normalization reserves for excess deferred income taxes (EDFIT) and accumulated deferred investment tax credits (ADITC) with respect to those assets. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 2, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 25, 2003, at 10 a.m. must be received by June 2, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-104385-01), room

5226, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG-104385-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically by submitting comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622-3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Treena Garrett, at (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the normalization requirements of sections 168(f)(2) and 168(i)(9) of the Internal Revenue Code (Code), section 203(e) of the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2146), and former section 46(f) of the Code. The proposed regulations respond to changes in the electric power industry resulting from deregulation of electricity generation facilities.

Section 168 of the Code permits the use of accelerated depreciation methods. Section 168(f)(2) provides, however, that accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes.

Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred federal income tax reserve, or ADFIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the

accelerated method used in computing actual tax expense.

This accounting treatment prevents the immediate flowthrough to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as cost-free investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between actual tax expense and ratemaking tax expense is charged to ADFIT, depleting the utility's stock of cost-free capital.

Excess Deferred Income Tax

The Tax Reform Act of 1986 reduced the highest corporate tax rate from 46 percent to 34 percent. The excess deferred federal income tax (EDFIT) reserve is the balance of the deferred tax reserve immediately before the rate reduction over the balance that would have been held in the reserve if the 34 percent rate had been in effect for prior periods. The EDFIT reserves were amounts that utilities had collected from ratepayers to pay future taxes that, as a result of the reduction in corporate tax rates, would not have to be paid.

Section 203(e) of the Tax Reform Act of 1986 specifies the manner in which the EDFIT reserve can be flowed through to ratepayers under a normalization method of accounting. It provides that the EDFIT reserve may be reduced, with a corresponding reduction in the cost of service the utility collects from ratepayers, no more rapidly than the EDFIT reserve would be reduced under the average rate assumption method (ARAM). For taxpayers that did not have adequate data to apply the average rate assumption method, subsequent guidance permitted use of the reverse South Georgia method as an alternative. In general, both the average rate assumption method and the reverse South Georgia method spread the flowthrough of the EDFIT reserve over the remaining lives of the property that gave rise to the excess.

Accumulated Deferred Investment Tax Credits (ADITC)

Former section 46 of the Code similarly limited the ability of ratepayers to benefit from the investment tax credit determined under that section. Under former section 46(f)(2), an electing utility could flow through the investment credit ratably

(that is, could reduce the cost of service collected from ratepayers by a ratable portion of the credit) over the investment's regulatory life. The balance of the credit remaining to be flowed through to ratepayers would be held in a reserve for accumulated deferred investment tax credits (ADITC). If the utility elected ratable flowthrough of the credit, the rate base (the amount on which the utility is permitted to collect a return from ratepayers) could not be reduced by reason of any portion of the credit.

Deregulation of Generation Assets

When the normalization provisions were added to the Internal Revenue Code, electric utilities were vertically integrated to include generation, transmission, and distribution functions. Accelerated depreciation, investment credits, and normalization enhanced the cash flow needed to acquire and construct new generation assets. Driven by changes in technology and economics, however, the electric industry has been undergoing substantial changes. Many utilities have been selling generation assets to new entities that are not subject to rate of return regulation and are becoming transmission and distribution (or distribution-only) companies. In many cases, the deregulation of generation assets is occurring before the EDFIT and ADITC reserves associated with those assets have been flowed through to ratepayers.

The Service has issued a number of private letter rulings holding that flowthrough of the EDFIT and ADITC reserves associated with an asset is not permitted after the asset's deregulation, whether by disposition or otherwise. These rulings were based on the principle that flowthrough is permitted only over the asset's regulatory life and when that life is terminated by deregulation no further flowthrough is permitted. After further consideration, the Service and Treasury have concluded that neither former section 46(f)(2) nor section 203(e) of the Tax Reform Act suggests that the EDFIT and ADITC reserves should not ultimately be flowed through to ratepayers. Instead, Congress provided a schedule for flowing through the reserves so that utilities would have the benefit of cost-free capital for a predictable period.

The proposed regulations provide that utilities whose generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise, may continue to flow through EDFIT and ADITC reserves associated with those assets without violating the normalization rules. The rate of

flowthrough is limited, however, to the rate that would have been permitted if the assets had remained public utility property and the taxpayer had continued to use a normalization method of accounting (or ratable flowthrough of the credit) with respect to the assets. This result does not impose on utilities any burden unanticipated prior to deregulation and provides the flow-through originally anticipated by ratepayers, utility commissions, and utilities.

Comments Requested

In addition to comments relating to this notice of proposed rulemaking, comments are requested on the proper disposition of tax reserves (ADFIT, EDFIT, and ADITC) under the following set of facts. Regulated transmission assets from several public utilities (related or otherwise) are transferred to a utility partnership. This partnership is created solely as a transmission company. The transaction is subject to section 721 of the Code. The transmission assets are public utility property before the transfer and will be public utility property after the transfer. Is there a normalization violation if the deferred tax reserves are transferred to the new transmission company's regulated books and are considered in setting rates for the new transmission company? Alternatively, is there a normalization violation if the deferred tax reserves remain on the transferors' regulated books and are considered in setting their rates?

In addition, the proposed regulations do not address the treatment of deregulated assets under former section 46(f)(1) (relating to the use of the investment credit to reduce the rate base of electing taxpayers). Comments are also requested on this issue.

Proposed Effective Date

The regulations are proposed to apply to property that becomes deregulated generation property after March 4, 2003. In addition, a utility may elect to apply the proposed rules to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching a written statement to the utility's return for the tax year in which the proposed rules are published as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the ADDRESSES caption) timely to the IRS. All comments will be available for public inspection and copying. Treasury and IRS specifically request comments on the clarity of the proposed regulations and how they may be made clearer and easier to understand.

A public hearing has been scheduled for June 25, 2003, at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and submit an outline of the topics to be discussed and the time to be devoted to each topic by June 2, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.46-6 is amended by adding paragraph (k) to read as follows:

§ 1.46-6 Limitation in case of certain regulated companies.

* * *

(k) *Treatment of accumulated deferred investment tax credits upon the deregulation of regulated generation assets*—(1) *Scope.* This paragraph (k) provides rules for the application of former section 46(f)(2) of the Internal Revenue Code with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(2) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's cost of service permitted under former section 46(f)(2) is equal to the amount by which the cost of service could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued to reduce its cost of service by a ratable portion of the credit with respect to such property.

(3) *Cross reference.* See § 1.168(i)-{3} for rules relating to the treatment of balances of excess deferred income taxes when utilities dispose of regulated generation assets.

(4) *Effective date*—(i) *General rule.* This paragraph (k) applies to property that becomes deregulated generation property after March 4, 2003.

(ii) *Election for retroactive application.* A utility may elect to apply this paragraph (k) to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement "ELECTION UNDER § 1.46-6(k)" to the taxpayer's return for the tax year in which this paragraph (k) is published as a final regulation.

Par. 3. Section 1.168(i)-3 is added to read as follows:

§ 1.168(i)-(3) Treatment of excess deferred income tax reserve upon disposition of regulated generation assets.

(a) *Scope.* This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2146) with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(b) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference.* See § 1.48-6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated generation assets.

(d) *Effective date.*—(1) *General rule.* This section applies to property that becomes deregulated generation property after March 4, 2003.

(2) *Election for retroactive application.* A taxpayer may elect to apply this section to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement "ELECTION UNDER § 1.168(i)-3" to the taxpayer's return for the tax year in which this section is published as a final regulation.

David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03-4885 Filed 3-3-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY-031-FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions to its coal rules about roads, mine facilities, and excess spoil. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and clarify ambiguities.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t., April 3, 2003. If requested, we will hold a public hearing on the amendment on March 31, 2003. We will accept requests to speak until 4 p.m., m.s.t., on March 19, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601-1918, 307/261-6550, Internet: GPadgett@osmre.gov.

Dennis Hemmer, Department of Environmental Quality, Herschler Building, 4th Floor West, Cheyenne, Wyoming 82002, 307/777-7682, Internet: dhemmer@state.wy.us.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261-6550, Internet: GPadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background of the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and

reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of [the] Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the] Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 28, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, Federal Register (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated November 28, 2002, Wyoming sent us a proposed amendment to its program, (administrative record number WY-36-1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a 30 CFR part 732 letter dated February 21, 1990, and an October 3, 1990, follow-up letter (administrative record numbers WY-36-6 and WY-36-7) that we sent to Wyoming, and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Wyoming proposes to revise the following Coal Rules:

- (1) Chapter 1, Section 2, and Chapter 2, Section 2(a) and (b), miscellaneous revisions regarding use of the terms, "primary" and "ancillary" roads and "mine facilities;" (2) Chapter 1, Section 2(bu), definition of public road; (3) Chapter 1, Section 2(bz), definition of road; (4) Chapter 2, Section 2(b)(i)(D)(V), maps and plans; (5) Chapter 2, Section 2(a) and (b), permit applications; (6) Chapter 2, Section 2(b)(xix), road systems; (7) Chapter 4, Section 2(j), road classification system; (8) Chapter 4, Section 2(j)(v), performance standards; (9) Chapter 4, Section 2(j)(v), reclamation; (10) Chapter 4, Section 2(j)(i)(A), and 2(j)(ii), roads and other transportation facilities; (11) Chapter 4, Section 1(a)(v), access roads and haulage roads; (12) Chapter 4, Section 2(j)(vii), primary roads; (13) Chapter 4, Section 2(j), exemptions concerning

EXHIBIT ____ (LK-6)

Section 46 -- Investment Credit

Summary

Amortization Period Reduction Won't Violate Normalization Rules

The Service has ruled that a mandated change in a regulated utility's amortization periods won't cause it to run afoul of the investment tax credit limitation rules in section 46(f)(2).

An investor-owned regulated public utility provides electricity. A government commission establishes the utility's rates and allowed it to recover its net book investment in its plants by returning deferred ITCs to its customers over an eight-year recovery period. State law changed and required sunk costs, including ITCs, to be recovered over five years.

The Service ruled that the ratable amortization of the utility's remaining ITCs over a five-year period complies with the normalization rules of section 46(f)(2). At the same time, it ruled that the one-time catch-up adjustment will also comply with section 46(f).

The Service also ruled that any remaining credits after the regulatory lives of the plants may accrue to the benefit of the utility shareholders. Finally, the Service ruled that the ITC may be "flowed through" to rates based on the new amortization period.

Full Text

UIL Number(s) 0167.22-01

Date: September 29, 1998

In Reference to: CC:DOM:P&SI:6-PLR-117173-97

LEGEND:

Taxpayer = * * *
Parent = * * *
District = * * *
Commission A = * * *
Commission B = * * *
Plant = * * *
State X = * * *
Intervenor = * * *
Decision A = * * *
Decision B = * * *
Law = * * *
a = * * *
b = * * *
c = * * *
d = * * *
e = * * *
f = * * *
g = * * *
h = * * *

i = ***
j = ***
k = ***

Dear ***

[1] This responds to your request of September 12, 1997, and additional material, filed on behalf of the Taxpayer. Taxpayer requests four rulings as to whether certain actions of Commission A and State X related to utility restructuring are in compliance with the normalization requirements of sections 46(f)(2), 46(f)(10), and 168(i)(9)(B) of the Internal Revenue Code.

FACTS

[2] The Taxpayer has represented the facts to be as follows:

[3] The Taxpayer is a wholly-owned subsidiary of the Parent. The Taxpayer is an investor-owned regulated public utility engaged in the generation, purchase, transmission, distribution and sale of electric energy in State X. The Parent files a consolidated return with its affiliated companies on a calendar year basis using the accrual method of accounting. The District Director's office in District has examination jurisdiction over the Parent's tax returns.

[4] Taxpayer owns an a percent interest in Plant A. Taxpayer is subject to the rate making jurisdiction of the Commissions. The jurisdictional factor used by Commission A in setting rates is b.

[5] On c, Taxpayer filed its d test year rate application which included cost of service rate recovery for operating and maintenance expenses, capital expenditures and administrative expenses associated with Plant A.

[6] On e, Commission A issued Decision A which established rates for other Plant owners in a general rate case. Included in this Decision was approval of an agreement between the Taxpayer, the Intervenor and other owners of Plant A that would enable the Taxpayer to recover its remaining net book investment in Plant A by f. Pursuant to this decision, deferred investment tax credits would be returned to customers over the new remaining 8-year period if such action complies with the normalization requirements of section 46(f)(2).

[7] On g, Commission A issued Decision B, which reaffirmed the 8-year recovery period and established a rate cap. Thus, under the approved pricing mechanism and rate cap, if the revenue requirement associated with the 8-year sunk cost amortization of Plant A exceeded previously approved ratemaking amounts, recovery of such excess would be deferred to the following year. To the extent that depreciation is excluded from cost of service due to this deferral, the investment tax credit attributable to the excluded portion of the property would also be deferred.

[8] On h, State X adopted the Law which provided that sunk costs relating to generation-related assets shall be subject to recovery from all customers on a nonbypassable basis. The Law froze rates effective k, and provided that the recovery of these costs shall not extend beyond j. A special provision in the Law allowed recovery of incremental costs for Plant A through f. Because of the Law, the 8-year recovery period of Decision B was further accelerated commencing j, so that amortization of the sunk costs, including investment tax credits, will be complete by i.

REQUESTED RULINGS

[9] Taxpayer has requested four rulings. First, Taxpayer has requested a ruling that the ratable amortization of its remaining investment tax credits for Plant A over a new 8-year (subsequently shortened to 5-years) regulatory period instead of over the previous period of 16 years, complies with the normalization provisions of section 46(f) of the Code. Second, Taxpayer requests a ruling that a one-time catch-up adjustment that includes the incremental difference in amortization from the effective dates of the Decisions to the date of this ruling complies with section 46(f). Third, Taxpayer requests a ruling that if at the end of the revised regulatory lives of the Plants, all of the sunk cost and the associated investment tax credit has not been reflected in rates due to the rate cap, the remaining credit may accrue to the benefit of its shareholders without violating the normalization rules. Fourth, Taxpayer requests a ruling that if the rate

cap allows a depreciation recovery more rapid than anticipated, the investment tax credit may be flowed through to rates based on the new anticipated depreciable period without violating the normalization rules (if depreciation is deferred due to the rate cap, then the investment tax credit will also be deferred).

LAW AND ANALYSIS

[10] Prior to the enactment of the Tax Reform Act of 1986 (Act), section 38 of the Code provided an investment tax credit for investments in certain depreciable property. Sections 46(f)(1) and 46(f)(2) imposed limitations on the use of investment tax credits by regulated public utility companies. Section 46(f)(1) applied generally except as to taxpayers that elect the application of section 46(f)(2).

[11] Section 46(f)(2) of the Code provided that no investment tax credit shall be allowed with respect to public utility property if (1) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the otherwise allowable credit, or (2) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the otherwise allowable credit.

[12] In determining whether, or to what extent, the investment credit has been used to reduce cost of service, section 1.46-6(b)(2)(ii) of the regulations provides that reference shall be made to any accounting treatment that affects cost of service. An example of such treatment is a reduction in the amount of Federal income tax expense taken into account for ratemaking purposes by all or a portion of the credit.

[13] Section 1.46-6(b)(3)(ii)(A) of the regulations provides that in determining whether, or to what extent, the investment credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, reference shall be made to any accounting treatment that reduces the permitted return on investment by treating the credit less favorably than the capital that would have been provided if the credit were unavailable.

[14] Section 1.46-6(b)(4)(i) of the regulations provides that cost of service or rate base is also considered to have been reduced by reason of all or a portion of a credit if such reduction is made in an indirect manner. Under section 1.46-6(b)(4)(ii), one type of such indirect reduction is any ratemaking decision in which the credit is treated as operating income subject to ratemaking regulation or is treated less favorably than the capital that would have been provided if the credit were unavailable. For example, if the credit is accounted for as nonoperating income on a company's regulated books of account but a ratemaking decision has the effect of treating the credit as operating income in determining rate of return to common shareholders, then cost of service has been indirectly reduced by reason of the credit.

[15] According to section 1.46-6(b)(4)(iii) of the regulations, a second type of indirect reduction is any ratemaking decision intended to achieve an effect similar to a direct reduction to cost of service or rate base. In determining whether a ratemaking decision is intended to achieve this effect, consideration is given to all the relevant facts and circumstances of each case, including, but not limited to, the record of the proceeding, the regulatory body's orders or opinions (including any dissenting views), and the anticipated effect of the ratemaking decision on the company's revenues in comparison to a direct reduction to cost of service or rate base by reason of the investment tax credits available to the regulated company.

[16] For purposes of determining whether or not the taxpayer's cost of service for ratemaking purposes is reduced by more than a ratable portion of the investment credit, section 46(f)(6) of the Code provides that the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account shall be used. Section 1.46-6(g) of the regulations provides that the investment tax credit amortization period must be no shorter than the one used to calculate ratemaking depreciation expense.

[17] Furthermore, under section 1.46-6(g)(2) of the regulations, what is "ratable" is determined by considering the period of time actually used in computing the taxpayer's regulated depreciation expense for the property for which a credit is allowed. The term "regulated depreciation expense" means the depreciation expense for the property used by a regulatory body for purposes of establishing the taxpayer's cost of service for ratemaking purposes. In addition, if there is a revision for purposes of computing regulated depreciation expense beginning with a particular accounting period, the computation of ratable portion of investment tax credit must also be revised beginning with such period.

[18] Section 46(f)(2) of the Code states that a taxpayer satisfies the normalization requirements if the cost of service is reduced by no more than the ratable portion of the investment tax credit. Ratable is determined under section 1.46-6(g)(2) of the regulations by reference to the period of time actually used in computing a taxpayer's regulated depreciation expense for the property for which the credit is allowed. Accordingly, as long as the investment tax credit is amortized no more rapidly than over the period actually used for regulated depreciation purposes, the ratemaking treatment of the credit will comply with the normalization requirements. In the facts set forth above, the Taxpayer's investment tax credit amount will always be ratable by reference to the related asset's regulated depreciation period. This will be true whether the depreciable basis is recovered over the anticipated 8-year or 5-year periods, or whether the depreciable basis recovery is deferred or accelerated due to the rate cap. So long as the amortization of the investment tax credit is deferred or accelerated ratably on the same basis as the recovery of the depreciable basis, there will be no violation of the normalization rules.

[19] Taxpayer has requested a one-time catch-up adjustment that includes the incremental difference in amortization from the effective dates of the Decisions to the date of this ruling. Under the method described above, the period of time over which the investment tax credit is amortized is linked to the rate recovery period actually used in computing the Taxpayer's regulated depreciation expense. As in the previous analysis, there will be no violation of the normalization rules so long as at no time does the cumulative amount of the investment tax credit reduce cost of service more rapidly than ratably.

[20] If there is unamortized investment tax credit at the end of the rate freeze period, the Taxpayer proposes to retain the remaining investment tax credit for the benefit of its shareholders. This action will not constitute a reduction in the Taxpayer's cost of service for ratemaking purposes or on its regulated books of account within the meaning of section 46(f)(2)(A) of the Code, nor a reduction of the base to which the rate of return for ratemaking purposes is applied under section 46(f)(2)(B). Thus, there is no normalization violation for the Taxpayer's retention of the remaining investment tax credit under the facts presented.

CONCLUSIONS

1. The ratable amortization of the Taxpayer's remaining investment tax credits for Plants A over a new 8-year (or 5-year as subsequently shortened) regulatory period instead of over the previous period of 16 years, complies with the normalization provisions of section 46(f) of the Code.
2. A one-time catch-up adjustment that includes the incremental difference in amortization from the effective dates of the Decisions to the date of this ruling complies with section 46(f).
3. If at the end of the revised regulatory lives of the Plants, all of the sunk cost and the associated investment tax credit has not been reflected in rates due to the rate cap, the remaining credit may accrue to the benefit of its shareholders without violating the normalization rules.
4. If the rate cap allows a depreciation recovery more rapid than anticipated, the investment tax credit may be flowed through to rates based on the new anticipated depreciable period without violating the normalization rules. If depreciation is deferred due to the rate cap, then the investment tax credit must also be deferred.

[21] Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the above-described facts under any other provision of the Code or regulations. This letter ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that this ruling may not be used or cited as precedent.

[22] In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized legal representatives. In addition, a copy of this letter is being sent to the District Director of the District.

Sincerely yours,

Charles B. Ramsey
Chief, Branch 6
Office of the Assistant Chief

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Counsel
(Passthroughs and Special
Industries)